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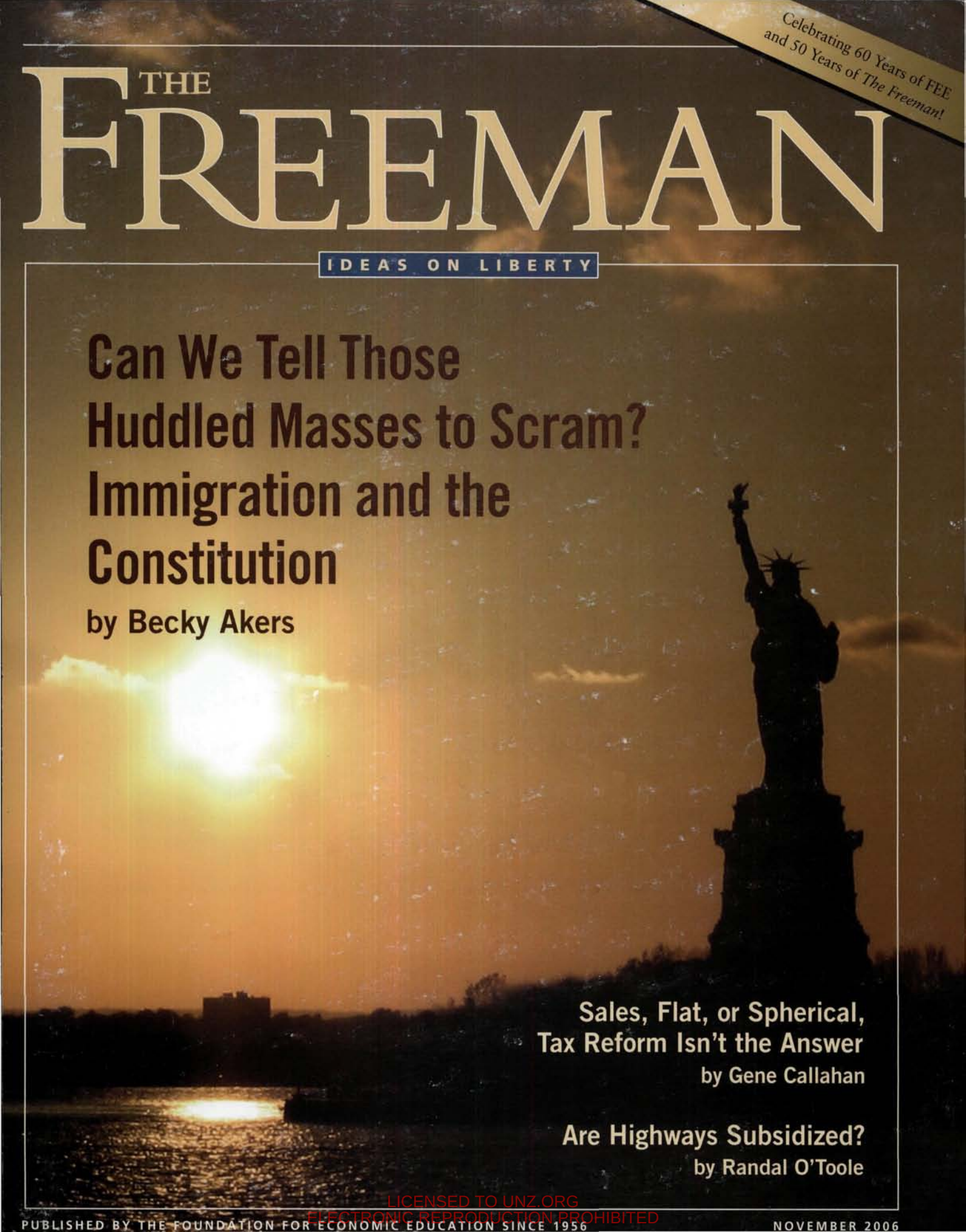

Can We Tell Those Huddled Masses to Scram? Immigration and the Constitution

by Becky Akers

Sales, Flat, or Spherical, Tax Reform Isn't the Answer

by Gene Callahan

Are Highways Subsidized?

by Randal O'Toole

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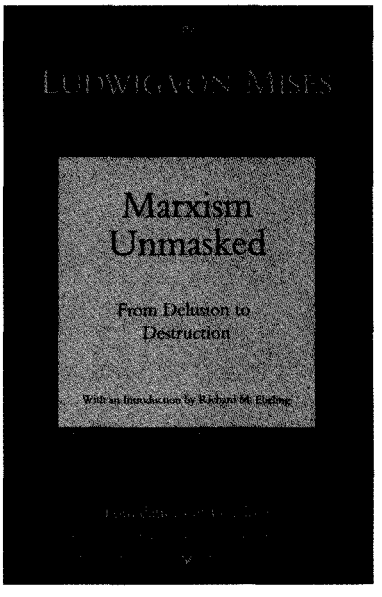
New from FEE!

LUDWIG VON MISES

Marxism Unmasked: From Delusion to Destruction

Edited and with an introduction by Richard M. Ebeling



In the summer of 1952 Ludwig von Mises delivered a series of lectures at a seminar in San Francisco sponsored by *The Freeman* magazine. Bettina Bien Greaves, a member of FEE's staff at the time, took down every word of each lecture in shorthand and faithfully transcribed them for eventual publication.

Marxism Unmasked: From Delusion to Destruction uniquely captures Mises as teacher. Unlike many of his longer, more formal writings, these lectures are peppered with numerous historical asides and common-sense examples that convey the ease and spirit of the spoken word.

Mises presents his insight into the fundamental errors and misconceptions to be found in Marx's theories of dialectical materialism and class warfare, as well as a historical analysis of the real benefits from the Industrial Revolution that coincided with the emergence of modern capitalist society.

He also explains the role of savings, investment, and the profit-and-loss system as the engines for economic and cultural progress, and which have helped eliminate the poverty that has plagued mankind through most of history. He also discusses the nature and workings of capital markets and the importance of market-based interest rates free from government manipulation and inflation. In addition, he shows that foreign investment in underdeveloped parts of the world has not been the cause of poverty or exploitation, as socialists have constantly claimed, but rather the source of accelerated prosperity and human improvement for tens of millions of people.

All of Mises's arguments and analyses are placed in the wider context of individualism versus collectivism, the importance of freedom for the dignity and betterment of every human being, and the dangers from surrendering liberty and property to the paternalistic state. Through it all, he offers the reader a vision of the classical-liberal ideal of the free and prosperous society.

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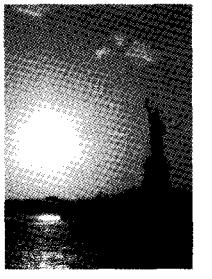

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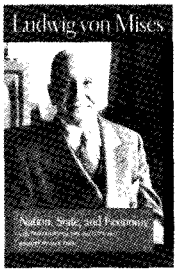

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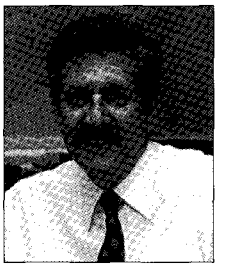
From the President

Keynesian Economics and Constitutional Government

BY RICHARD M. EBELING



Last month 650 economists called for an increase in the federal minimum wage, saying it was the responsibility of the government to "improve the well-being of low-wage workers" by mandating the terms under which people may be employed. Among these economists were five recipients of the Nobel Prize in economics. One of them was Lawrence Klein of the University of Pennsylvania. This should have been no surprise since Klein (b. 1920) has long advocated Keynesian-style policies that threaten the institutions of a free society.

Klein received the Prize in 1980 for what the Nobel committee called his contributions to econometric modeling for purposes of directing economic policy. What is less well known today is that immediately after World War II he was one of the great popularizers of the "new economics" of John Maynard Keynes, especially in his widely read book, *The Keynesian Revolution*, published in 1947.

In *The General Theory of Employment, Interest, and Money* (1936) Keynes had argued that the market economy was inherently unstable and susceptible to wide and unpredictable swings in output, employment, and prices. Worse yet, he asserted, the market could get stuck in a prolonged period of high unemployment and idle resources. Only judicious government monetary and fiscal policy could assure a return to sustainable full employment.

In the decade following publication of *The General Theory* Keynes's ideas captured the hearts and minds of a growing number of economists. The book was soon translated into a variety of foreign languages, including German; that edition appeared in the autumn of 1936. Addressing himself to the Nazi economists of Hitler's Germany in the preface to the German-language edition, Keynes declared that his theory of "aggregate demand" management by government was more easily adapted to a totalitarian economy than a relatively free-market system:

> The theory of aggregate production, which is the point of the following book, nevertheless can be much easier adapted to the conditions of a totalitarian state, than . . . under conditions of free competition and a large degree of laissez-faire. . . . Although I have, after all, worked it out with a view to the conditions prevailing in the Anglo-Saxon countries where a large degree of laissez-faire still prevails, nevertheless it remains applicable to situations in which state management is more pronounced.

While it would be wrong to suggest that Keynes had any direct sympathy for totalitarianism or the Nazi system, he understood clearer than many of his followers that the more the government controlled the economy the easier it would be to implement what soon became known as Keynesian-style policies.

Klein's *The Keynesian Revolution* represented the growing consensus of the time among economists and government-policy advocates on how monetary and fiscal tools should be used to manipulate the economy. The book was widely assigned to college students in their economics classes, thus further spreading Keynes's message.

In the final chapter Klein outlined what would be necessary from government if the Keynesian "insights" were to be fully applied for the "social good." In a world guided by Keynes's ideas Americans would have to accept a greater degree of government regimentation than they had in the past. Should they be afraid of this? No, Klein assured his readers: "The regimentation of unemployment and poverty is infinitely more severe than the regimentation of economic planning." He was sure the American people would "quickly come forth with support" for the required regimentation of economic planning.

Richard Ebeling (rebeling@fee.org) is the president of FEE.

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The "economic planners" would have to have "complete control over government fiscal policy so that they can spend when and where spending is needed to stimulate employment and tax when and where taxation is needed to halt upward price movements." The traditional congressional budget process would have to be put aside. Klein was sure that "It is inevitable that the Congressional debating techniques will be much too slow and cumbersome to provide the flexibility needed for fiscal policy in a full-employment program." In its place:

> We must have a planning agency always ready with a backlog of socially useful public works to fill any deflationary gap that may arise [through discretionary government deficit-spending powers]; similarly, we must have a price-control board always ready with directives and enforcement officers to wipe out any inflationary gap that may arise. . . . Government spending should be very flexible and subject to immediate release or curtailment, in just the precise amount which will maintain full employment, no more and no less. . . . This is the road to the kind of full employment that we need.

From where would come the money that the government would need for all this fiscal activity? Don't worry, Klein said, the government can just borrow and borrow and borrow. But would it not have to be paid back? Wasn't this merely imposing a higher tax burden on the citizenry in the future? We need have no concern, he declared, since, after all, "public debt can never be a burden, because we owe it to ourselves."

At the same time, government would have to keep individuals from saving too much and spending too little, since excessive savings would diminish the "aggregate demand" on which "full employment" depended. This would require, Klein said, income redistribution from rich to poor because the rich have a higher marginal propensity to save.

To reinforce this objective the motive for personal saving would have to be undermined by the government's taking greater responsibility for such things as retirement planning. "The people acting on individualistic principles do not know their own best interests," he said.

Once discussing some of the implications of his own ideas, Keynes said that in a world consistent with his policy prescriptions, "customary morals, conventions and traditional wisdoms" would have to be set aside. As Klein clearly showed, this included the American tradition of constitutional government and financial self-responsibility.

For the last hundred years constitutionally limited government has been slowly but surely eroded in the United States and around the globe. Governments have grown in discretionary power over the lives and fortunes of the citizenry everywhere we look. Restraints on government have been loosened so those in political authority can do more *to the people* in the name of "for the people."

The traditional purpose of constitutions has been to restrain and specify the powers of government. The presumption is that government is the enemy of liberty and prosperity. Unbridled government threatens to enslave the people through controls, regulations, and prohibitions. Unlimited government power to tax and spend undermines the ability of the people to plan their own lives and peacefully interact with their fellow citizens for mutual improvement.

Keynesian economics and popularizers of its policy prescriptions like Lawrence Klein were major contributors to our continuing trend toward larger and evermore intrusive government. They persuaded more than a generation of students and economists that the free market is untrustworthy of supplying either jobs or justice. They rationalized the need for unbounded political power in the name of economic stability and distributive fairness. They weakened the belief in the importance of constitutional limits on power.

Even today, after the supposed counterrevolution against Keynesian economics that began during the "stagflation" of the 1970s, those ideas still have their hold over the minds of too many economists, policy makers, and opinion molders. If freedom is to be restored, part of the task will have to be a thorough overthrow of the Keynesian concepts that have been so deeply imbedded into public thinking by people like Lawrence Klein.

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Perspective

Natural, Not National, Rights

Somewhere in my reading about immigration I encountered the deceptively simple point that it's not *immigration* we should be talking about but *migration*. That's another way of saying the focus has been on "us," when it should be on the people coming to the United States. The discussion has proceeded as if *they* have no rights in the matter but *we* do. *We* will let *them* come here if and only if we have a use for them. And "we" doesn't refer to a group of free individuals, but rather to a collective Borg-like entity with rights superior to any held by its constituents. The collectivist, and therefore statist, nature of the discussion indicates how far we've drifted from our individualist and voluntarist moorings.

You can see what I mean in most of the commentary about what is prejudicially called the "immigration problem." By that I don't mean such real dangers as migrant-exploitation and migrant-smuggling, which are products not of the *lack* of border control but precisely the opposite. No one would choose to cross the border at a cost of thousands of dollars and squeezed into a gas tank if he could take a bus or a plane.

No, the "problem" that "we" presumably must solve is that too many of the wrong kind of people are coming here. Neoconservative columnist Charles Krauthammer writes, for instance, "Do liberals [he means Democrats] believe that the number, social class, education level, background and country of origin of immigrants—the kinds of decisions every democratic country makes for itself—should be taken out of the hands of the American citizenry and left to the immigrants themselves and, in particular, to those most willing to break the very immigration regulations the American people have decided upon democratically?"

I'm sure Krauthammer doesn't think of himself as a collectivist, but could his question be more saturated with collectivism? What does he mean when he says a democratic country decides? An abstraction, such as a country, doesn't make decisions. It requires prodigious evasion to take the self-serving, logrolling, rent-seeking, voter-pandering, incumbent-protecting activities of a gaggle of legislators, who don't even read the bills they vote on, for The Country's decision-making. Consider-

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ing the long and winding road from an election of a congressman to the passage of an immigration bill, it's laughable to claim that the decision over who may enter the country lies in the hands of the American citizenry. Civics-book clichés can't change the facts.

Krauthammer goes on: "There are tens of millions of people who want to leave their homes and come to America. We essentially have an NFL draft in which the United States has the first, oh, million or so draft picks. Rather than exercising those picks, i.e., choosing by whatever criteria we want—such as education, enterprise, technical skills and creativity—we admit the tiniest fraction of the best and brightest and permit millions of the unskilled to pour in instead."

Imagine that. We're giving up a golden opportunity to engineer the composition of our society. It's this sort of thinking that attracted many respectable people to eugenics in the twentieth century. Krauthammer presumably would oppose central planning in other respects. But he's all for centrally planning the migrant component of the U.S. population. It's hard to see how centralized decision-making is bad in most matters but good in this one.

The synthetic right of The Country or Citizenry to decide who comes here nullifies the real, natural rights of flesh-and-blood individuals—those very rights that we believe set us apart from the rest of the world. Judging by the discussion, migrants have no rights to speak of; the Bush administration even demands that the Mexican government block "its" people from leaving Mexico. Forbidden entry requires forbidden exit. An American whose land borders Mexico apparently isn't entitled to think of that boundary as *his* and to invite people from the other side to live or work on his property. Instead, it's "our" border, with "our" including people thousands of miles away.

Then there's the popular view that if migrants couldn't find jobs here, they wouldn't come. Thus the Lou Dobbses of the country want to imprison employers who have the gall to hire migrants not in possession of tamper-proof government papers. So much for freedom of association and contract. So much for free and private enterprise.

Americans, we apparently are in need of reminding, are not the only people with rights, which are universal and natural, not national. As Robert Higgs says, "[T]he Bill of Rights makes no mention of anyone's citizenship status."

A country is not a country club. What separates a true liberal from everyone else is his or her belief that freedom is not a luxury for some, to be enjoyed only when they approve of the outcome, but a necessity for individual human flourishing.

★ ★ ★

What was the early American attitude toward immigration? Becky Akers consults a variety of sources to come up with the answer.

From the beginning FEE has promoted the right of people to change their location regardless of national boundaries. This month's FEE Timely Classic is an excerpt from the early pamphlet "The Freedom to Move" by Oscar Cooley and Paul Poirot.

Tax reform is a perennial issue that absorbs much activist time and money. Is it a good investment for advocates of the freedom philosophy? Gene Callahan says no.

Capitalism and democracy are often said to go hand in hand. That sort of sloppy thinking will only lead to trouble, writes Arthur Foulkes.

Critics of the automobile and the highways that make it valuable charge that without government subsidies our transportation habits would be radically different. Randal O'Toole challenges the premise.

Who was Auberon Herbert and why was he saying those bad things about government? Gary Galles will tell you.

Eminent domain can threaten nearly any American's home or business. Fredrick McCarthy has a story about one company's effort to keep from being turned into a football-stadium parking lot.

Here's what our columnists contribute this month. Richard Ebeling exposes Keynesian authoritarianism. Donald Boudreaux cautions against bad arguments. Burton Folsom describes a lethal New Deal program. Walter Williams revisits the Constitution. And David Henderson, hearing arguments that raising the minimum wage would stanch Mexican migration, replies, "It Just Ain't So!"

Books coming under scrutiny herein deal with the rise of collectivism, the fateful year 1776, a Supreme Court justice's view of the Constitution, and how to make decisions.

—Sheldon Richman
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Raising the Minimum Wage Will Discourage Migration? It Just Ain't So!

BY DAVID R. HENDERSON

In "Raise Wages, Not Walls," an op-ed in the July 25 *New York Times*, Michael Dukakis and Daniel Mitchell make a proposal that is breathtaking in its misunderstanding of basic economics. After showing problems with the various congressional proposals to limit illegal immigration, they give their own solution: increase the minimum wage. They write, "If we are really serious about turning back the tide of illegal immigration, we should start by raising the minimum wage from $5.15 per hour to something closer to $8." This, they argue, will make currently low-wage jobs more attractive to people who are legally in the United States. Making Americans more willing to work at these jobs, they write, would deny "them [the jobs] to people who aren't supposed to be here in the first place." They don't specify how this would deny jobs to illegal immigrants, but seem to place their faith in "tough enforcement of wage rules."

But here's the irony. The proposal would reduce the number of jobs available to people here legally and give illegal immigrants an *advantage* in the competition for jobs. Dukakis and Mitchell reach a mistaken conclusion by confusing demand and supply, and showing a misunderstanding of how the minimum wage is enforced. That Dukakis, a former presidential candidate and a political science professor at Northeastern University, made such a mistake in economic reasoning is understandable. That Mitchell, a professor of management and public policy at UCLA, did so is less understandable: both his B.A. (Columbia) and his Ph.D. (MIT) are in economics.

When the minimum wage rises, what happens? Some jobs that were worth hiring someone to do are no longer worth filling. The jobs lost are the most marginal ones, the ones that had low value and that paid little. That's why the vast majority of studies of the minimum wage have found that increases, all other things equal, reduce the number of low-skilled jobs offered and filled.

Surely Dukakis, a public-policy wonk for the whole of his adult life, and Mitchell, a trained economist, must know that. So how do Dukakis and Mitchell contend with that fact? First, they admit it—kind of. They write, "If we raise the minimum wage, it's possible some low-end jobs may be lost." Notice the redundancy in "it's possible" and "may." A good editor, and I'm sure the *New York Times* has many, would have caught this and said: " 'It's possible' means the same thing as 'may' and so you should drop one." Why didn't an editor do this? My guess is that the editor, like Dukakis and Mitchell, wanted to create the idea that the job loss would be small. By hedging twice, the authors leave that impression in many readers' minds.

But still, there's job loss, and even they, in their "just maybe" way, admit it. So how do they get to the conclusion that a higher minimum wage would help Americans? They write that if the government increased the minimum wage, "more Americans would also be willing to work in such [previously low-paying] jobs." That's true. When the minimum wage goes up, jobs that wouldn't have been attractive to some people will be attractive to them. But the objection to the minimum wage has never been about whether more people would be willing to work at a higher wage than would be willing to work at a lower wage. The problem is that being

David Henderson (drhend@mbay.net), who was once a minimum-wage worker, is a research fellow with the Hoover Institution and an associate professor of economics at the Naval Postgraduate School in Monterey, California. He is coauthor of Making Great Decisions in Business and Life *(Chicago Park Press, 2006).*

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willing to work at a job isn't enough: someone has to be willing to *offer* you that job. If simple willingness to work were enough to get you a job, then a classic "Seinfeld" episode wouldn't have been funny. In that episode George Costanza is out of work and wants a job. He sits around with Jerry Seinfeld trying to decide what kind of job he should get. George comes up with the idea of being a sports commentator and lays out how much fun that would be. The audience laughs because they realize that George's simple willingness to work is not enough: another necessary condition is that someone think he's good enough to be worth the high pay that sports commentators get. I bet even Dukakis and Mitchell, if they saw that episode, would laugh. Which is why they should laugh at their own proposal—if not for its tragic consequences.

But wait a minute, Dukakis and Mitchell might say: there's still a thin spot of light at the end of our constructed tunnel. They argue that raising the minimum wage and increasing its enforcement will push illegal immigrants out of jobs and make these jobs available for Americans. It is true that if the minimum wage caused the number of illegal immigrants working to fall more than the total number of jobs fell, there would be more minimum-wage jobs for Americans. But is this likely? No, and in thinking it likely, they show a misunderstanding of how the minimum wage is enforced.

Their model of enforcement, it seems, is of diligent federal workers going into workplaces and checking records on wages paid. But employers willing to break the law on wages are likely to be willing to break the law on record-keeping. In 2005 the U.S. Department of Labor's Wage and Hour Division put 969,776 hours into enforcement of all parts of the federal wage regulations. This would translate into only 500 full-time workers nationwide. And not all of these were involved in enforcing the minimum wage: some were enforcing overtime regulations, child-labor regulations, and more. So even quadrupling the number of enforcers would not make a major dent when the number of low-wage employers would likely be in the hundreds of thousands.

The main enforcement of the minimum wage is initiated by employees, not by the government. An employee who thinks he was paid less than the minimum can contact the federal government or the state labor board and show his pay records. Then the government collects back wages and a fine from the employer. In 2005 the Labor Department reported 30,375 complaints registered about employer violations of wage and hours laws. The vast majority of these complaints were likely by employees. That's why the minimum wage is so effective. But employers aren't typically stupid. They know this risk, which is why even employers who have no ethical qualms about breaking the law hesitate to hire people at less than the minimum wage.

They Won't Complain

But there's one type of employee that the employer is not so afraid of hiring and paying less than the minimum: an illegal immigrant. Illegal immigrants are nervous about going to the government to report that they were paid less than the minimum. Employers, knowing this, are more willing to hire them. So while reducing the overall number of jobs, an increase in the minimum wage will actually open up more jobs for illegal immigrants, making it even harder for unskilled legal residents to find work.

How can not being able to sic the government on an employer be an advantage? However much someone might plead with an employer to offer him a job at below minimum wage, if the employer knows the employee can sue for back wages, he probably won't offer the job. But not being able to sue because the job candidate is here illegally makes his promise not to sue credible, which also means he doesn't even need to make such a promise. The illegal immigrant gets the job.

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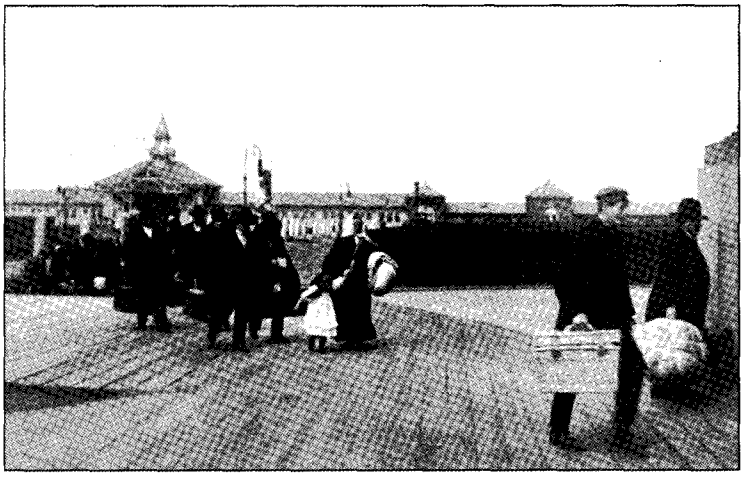
Can We Tell Those Huddled Masses to Scram? Immigration and the Constitution

BY BECKY AKERS

In 1873 some Presbyterians in Kentucky invited a young Canadian to be their pastor. Tensions in the border state were still high following the War of Southern Independence, and the congregants hoped that a neutral outsider could pacify folks not only within their own church but even across denominations.

Rev. A.B. Simpson succeeded so well that he was next called to the 13th Street Presbyterian Church in New York City. Once again his Biblical preaching resonated not only with the wealthy Americans of 13th Street Presbyterian but also with the Italian immigrants thronging the neighborhood. About 100 of them were soon clamoring to join the church. An immigrant himself, Rev. Simpson was delighted. His church, however, was not. The man who had reconciled Yankees and rebels was unable to convince his fellow Christians to welcome poor foreigners. Rev. Simpson left the Presbyterians and eventually founded the Christian and Missionary Alliance. Today the denomination numbers approximately 2.5 million members in 40 countries (see "What Is the Alliance Doing Today?" www.cmalliance.org/whoweare/whoweare-present.jsp).



Immigration has pitted Americans against one another for over a century now. Intriguingly, that's about the same amount of time the federal government has presumed an interest in the issue. Its interference has turned the debate over immigration into a toxic brew. But when we strain the emotion and rhetoric from it, it boils down to a simple question: should the state regulate our comings and goings?

From the beginning colonial governments have involved themselves with American immigration. Sometimes that involvement was as total as the French and Spanish kings' spending their subjects' money to export colonists to the New World and then ruling them. Other times there was less picking of poor people's pockets: the British Crown preferred to grant charters.

On April 10, 1606, for example, King James chartered the London Company, a group of merchants and noblemen, to settle Virginia. Charters may have been "traditional legal instruments," as Gordon Wood puts it in *The Radicalism of the American Revolution*, but they were fishy enough to stink. They allowed a government to "harness private enterprise and private wealth to carry out desirable public goals, such as founding a colony. . . . In return for the public service, such corporate grants gave to the recipients certain exclusive legal privileges, including the right to govern an area. . . ."

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Other immigrants came without any government support at all. The Puritans emigrated despite—and because of—the Crown's opposition to their ideas. Famously fleeing government's corruption and persecution for a better, freer life in the New World, they were some of America's earliest immigrants and the archetype of most who would follow.

As these newcomers transformed the eastern strip of the American continent from a wilderness into 13 British colonies, the Crown continued to influence immigration by unloading its "criminals" there. People were convicted of capital crimes in England on a depressingly regular basis, not because they were more vile than folks elsewhere, but because a man, woman, or child could be hanged for any of 300 felonies in the seventeenth century. Fortunately reprieves were almost as common as hangings—providing the victim left for America. This was essentially a life sentence to house arrest: convicts were closely guarded until their ship sailed, "put in irons" once aboard, and sold as indentured servants when they landed.

The government shipped these unfortunates exclusively to its chartered colony, Virginia, from 1619 to 1640; its excuse was that disease had depopulated the place. Actually it didn't need an excuse: charters privileged certain citizens over others only if they agreed that the government was in ultimate control. And so the waves of convicts lapped the next century: 4,500 sailed for America, primarily Virginia and Maryland, from 1661 to 1700; in the 50 years before the American Revolution 30,000 more did too, accounting for about 15 percent of immigrants during those decades.

Along with the convicts went the beggars and con men swarming England. They too were often rounded up and shipped against their will to the colonies.

Naturally the upright and industrious colonists already flourishing in America objected to this influx. Both Virginia and Maryland passed laws by the end of the seventeenth century that barred this dumping of humanity; as Virginia's House of Burgesses explained, "the complaints of several of the council and others, gent. Inhabitants . . . representing their apprehensions and fears lest the honor of his majesty and the peace of this colony be too much hazarded and endangered by the great numbers of felons and other desperate villains sent hither from the several prisons in England . . . " (Page Smith, *A New Age Now Begins: A People's History of the American Revolution*). The "gent. Inhabitants" had apparently forgotten who was boss. Parliament reminded them by overriding their legislation with its own in 1717.

And the convicts kept arriving. The *Virginia Gazette* of May 24, 1751, carried the following lamentation: "When we see our Papers fill'd continually with Accounts of the most audacious Robberies, the most cruel Murders, and infinite other Villanies [sic] perpetrated by Convicts transported from Europe, what melancholy, what terrible Reflections must it occasion! What will become of our Posterity? These are some of thy Favours, Britain! Thou are called our Mother Country; but what good Mother ever sent Thieves and Villains to accompany her children; to corrupt some with their infectious Vices and murder the rest?" Perhaps this early animosity to "Thieves and Villains" lives on in the hostility confronting immigrants today.

Germans Discouraged

On the other hand, government discouraged the sort of settlers the colonists wanted. People from the German principalities had a reputation for working hard and for loving liberty. The latter trait prompted the Crown to discourage their immigration in ways Jefferson noted in the Declaration: "[King George III] has endeavored to prevent the Population of these States; for that Purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their Migrations hither, and raising the Conditions of new Appropriations of Lands."

It seems, then, that whether dumping or discouraging, the government got it wrong when it came to immigration. The Founders took a lesson: their Constitution gave the federal government no authority to control an individual's movement into or out of the country. They did allow Congress "To establish an uniform Rule of Naturalization" (Article I, Section 8). Thus though the Founders distrusted government to regulate immigration, they permitted it to set requirements for citizenship. Power over mere procedure, rather than over practice, was all that men steeped in natural law confided to the state.

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This libertarian stance was tested during the new nation's first years, when the French Revolution with its animus against aristocracy sent refugees running for America. Their titles rankled Americans, who feared "aristocratical principles" as much as some modern Americans fear terrorism. But they didn't plead with the federal government to violate the Constitution by limiting immigration. Instead, Congress tinkered with the format for naturalization, raising the years of residency required before an immigrant could apply for citizenship, while adding an oath of allegiance and the renunciation of noble titles. Importantly, the impetus for citizenship still came from the immigrant. He went to a courthouse and took the oath because he wanted to, not because federal agents cruised the country checking papers and arresting those without the right ones.

No Such Word

The Constitution never mentions the word "immigration." The closest it comes is "migration," which it uses only once, in Article I, Section 9: the Feds are prohibited from interfering with "the Migration or Importation of such Persons as any of the States now existing shall think proper to admit. . . ." This applied specifically to slavery, though some folks take it out of context to justify controlling immigration at the state level. That, of course, is a philosophical dodge: it merely shifts power over immigrants from one governmental group to another without answering the question of whether *any* litter of bureaucrats and politicians should dictate other people's movements.

A final constitutional reference to immigration comes with the requirements for holding elective offices. Presidents must be native-born; representatives and senators must have resided in the country for seven and nine years, respectively.

Apparently, then, the Founders considered a man's movements far too integral to freedom to surrender to government. They did share one concern about immigration with modern Americans, though: assimilation. They worried that people coming from monarchies (which is to say, people coming from almost anywhere in the late eighteenth-century world) would, like the French aristocrats, neither understand nor value freedom. Jefferson warned that "Our [government] . . . is a composition of the freest principles of the English constitution, with others derived from natural rights and natural reason. To these nothing can be more opposed than the maxims of absolute monarchies. Yet, from such, we are to expect the greatest number of emigrants. They will bring with them the principles of government they leave, imbibed in their early youth. . . " (*Notes on Virginia*, quoted at www.cis.org/articles/cantigny/fonte.html#II).

Jefferson was not alone in pondering the difficulties of assimilation; many of the Founders, including Washington and Madison, did too. Their conclusions are often quoted out of context, making them seem opposed to freedom of movement. If they were, it's odd that they neglected to list "oversee, regulate, and control immigrants" among the government's constitutional duties.

Assimilation has gnawed at Americans throughout our history. Many viewed newcomers with suspicion—enough Americans with enough suspicion that they formed the Know-Nothing Party in 1849. Later reincarnated as the American Party, the Know-Nothings espoused other planks besides nativism, most notably anti-slavery; still, their platform tried to rewrite the Constitution by declaring, "*Americans must rule America*; and to this end, *native*-born citizens should be selected for all state, federal, or municipal offices of government. . ." (quoted in Smith). But for every Know-Nothing there were other Americans happy to widen the field of potential employees, employers, customers, and friends.

So far neither group had been able to compel the other to its opinion by force of law. Indeed, as Paul Johnson writes in *A History of the American People*, "No authority on either side of the Atlantic was bothered with who was going where or how. . . . An Englishman, without passport, health certificate or documentation of any kind—without luggage for that matter—could hand over £10 at a Liverpool shipping counter and go aboard. . . . If [the ship didn't sink but] reached New York he could go ashore without anyone asking him his business, and then vanish. . . . There was no control and no resentment. . . . In the five years up to 1820, some 100,000 people arrived in America without having to

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show a single bit of paper." Those were halcyon days for the Fourth Amendment and its prohibition on government's unreasonable searching of papers and effects. In fact, if the Amendment were still respected today, no bureaucrat could demand an ID, a green card, or other documents from anyone, citizen or not.

The early 1800s fortunately lacked exclusive unions, a minimum wage, OSHA, a Department of Labor, an IRS, and most licensing. So immigrants found all the work they wanted on arrival, despite their large numbers: from 1815 to 1860, more than 5 million people came from Europe to the United States. And yet, Johnson writes, "what all observers [of American life] recorded was the absence of begging. As one of them put it in 1839: 'During two years spent in traveling through every part of the Union, I have only once been asked for alms.' "

Free movement remained the standard until after Civil War convulsed the country. In 1875, just a few years before Rev. Simpson would ask his American Presbyterians to welcome foreign converts, Congress passed unconstitutional legislation to keep convicts and prostitutes from entering the nation.

Free movement remained the standard until after Civil War convulsed the country.

No doubt the Congress was jaded after all the assaults on the Constitution generated by the late war. What were another one or two—or hundred? And who could argue that convicts and prostitutes should be allowed in the country anyway? Surely if the Founders had been as enlightened as their Victorian descendants, they would have excluded such miscreants. Their grandchildren kindly remedied their oversight.

After convicts and prostitutes were proscribed, increasing numbers of folks failed to meet with congressional approval, and the government denied them freedom of movement as well: *ex*-convicts in 1882, along with Chinese laborers, lunatics, and idiots. Paupers, polygamists, and people with infectious diseases were added to the list in 1891, as were the so-called insane, while 1917 saw the illiterate barred from the country.

This high-handed legislation sparked lots of litigation; a few cases even landed before the Supreme Court. Curiously, when upholding the decisions of the new "superintendent of immigration" against foreigners who mistakenly believed themselves in the land of the free, the Court appealed to national sovereignty, congressional edicts, international norms, democracy—anything but the Constitution. *Chae Chan Ping v. U.S.* concerned a "subject of the emperor of China, and a laborer by occupation. He resided at San Francisco . . . until June 2, 1887 when he left for China . . ., having in his possession a certificate in terms entitling him to return [to the United States]. . . ." Unfortunately for Mr. Chae, Congress passed the Chinese Exclusion Act on October 1, 1888. This act not only invalidated his papers; it also imbued Congress with an authority heretofore unsuspected: the Court thundered, "Congress has power, even in times of peace, to exclude aliens from, or prevent their return to, the United States, for any reason it may deem sufficient." In fact, so "established" was this power that only a portion of the decision discusses it; the Court muses far more about a treaty then current with China, debates whether treaties are "of higher dignity than acts of Congress," and finally concludes they aren't.

But where did Congress's previously unknown "power . . . to exclude aliens" originate? The Court took a stab at explaining:

> The discovery of gold in California in 1848 . . . was followed by a large immigration. . . . [L]aborers came from [China] in great numbers . . . . [A]s their numbers increased, they began to engage in various mechanical pursuits and trades, and thus came in competition with our artisans and mechanics, as well as our laborers in the field. . . . The competition between them and our people . . . and the consequent irritation . . . [were] followed, in many cases, by open conflicts. . . . It seemed impossible for them to assimilate with our people . . . . [Californians] saw . . . great danger that at no distant day that portion of our country would be overrun by them, unless prompt action was taken to restrict their immigration. The people there accordingly petitioned earnestly for protective legislation. . . . So urgent and constant were the

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> prayers for relief against existing and anticipated evils, both from the public authorities of the Pacific coast and from private individuals, that congress was impelled to act on the subject.

A pity Californians weren't as agitated about the "existing and anticipated evils" of large government as they were about "large immigration."

Argument from Authority

The Court bolstered its appeal to raw democracy with another august argument, the "because the government says so, that's why" theory.

> When once it is established that congress possesses the power to pass an act, our province ends. . . . That the government of the United States, through the action of the legislative department, can exclude aliens from its territory is a proposition which we do not think open to controversy. Jurisdiction over its own territory to that extent is an incident of every independent nation. . . . As said by this court . . . speaking by Chief Justice MARSHALL: "The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. . . . All exceptions, therefore to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source."

Including, apparently, the Constitution.

In the absence of constitutional recourse, the decision also quoted such luminaries as "Mr. Marcy, the secretary of state under President Pierce," who opined, "Every society possesses the undoubted right to determine who shall compose its members, and it is exercised by all nations, both in peace and war."

The *Chae* Court threw a sop to the supreme law of the land in the decision's last pages: "The power of exclusion of foreigners being an incident of sovereignty belonging to the government of the United States as a part of those sovereign powers delegated by the constitution, when, in the judgment of the government, the interests of the country require it, cannot be granted away. . . ." But "sovereignty" as an excuse for curtailing freedom of movement is an alarming argument given the crimes governments claim as their "sovereign" prerogatives. War, plundering and taxation, fiat money and inflation, imprisonment of political opponents, torture—these are just some of the evils governments call sovereign rights. It follows that if the Feds have sovereignty to restrict movement, they also have sovereignty to torture, to dispossess dissidents, to rule by whim rather than by law.

The Court didn't flinch from these implications. It clearly concluded, "Whatever license, therefore, Chinese laborers may have obtained . . . to return to the United States . . . is held at the will of the government, revocable at any time, at its bleasure [sic]." Under sovereignty rather than the Constitution, other freedoms are no doubt "revocable at any time," at the government's pleasure too.

This dictatorial dialectic has distorted cases contemporary and modern. In *Lem Moon Sing v. United States* (1895) the Supreme Court circuitously proclaimed, "The power of congress to exclude aliens altogether from the United States, or to prescribe the terms and conditions upon which they may come to this country . . . is settled by our previous adjudications." The echoes reverberated in 1972, when the Court rehearsed history in *Kleindienst v. Mandel:* "Until 1875 alien migration to the United States was unrestricted. The Act of March 3, 1875, 18 Stat. 477, barred convicts and prostitutes. Seven years later Congress passed the first general immigration statute. . . . Other legislation followed," among the most revealing that of 1940, which barred "aliens who, at any time, had advocated or were members of or affiliated with organizations that advocated violent overthrow of the United States Government." Now we come to the Feds' real interest in immigration: screening immigrants for their political ideologies. Not surprisingly, "The pattern [of power over immigrants] generally has been one of increasing control. . . ."

Inhumanity went hand in hand with this anti-constitutionalism. In 1882 the overfed U.S. government began robbing people who were often wearing everything they owned by assessing immigrants an entrance fee. Nine years later it rewarded the victims with their own bureaucracy: the Office of Immigration would henceforth harass them full-time. Originally part of the Trea-

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sury Department (talk about barking up the wrong tree: exactly how many of "the tired, the poor, those yearning to breathe free" were promising pickings for Treasury?), it eventually immigrated to the Justice Department and was a forerunner of the current Center for Immigration Services—a bureaucracy whose idea of "service" coincides with that of the IRS.

Inhumanity has in fact always characterized the state's approach to immigration. The more power government gains over immigrants, the more cruelly it treats them. Even if one is unpersuaded by philosophical or constitutional arguments, one must favor freedom of movement out of simple compassion.

Migrant Travel, Then and Now

When the Crown "mercifully" reprieved convicts from immediate death in the seventeenth and eighteenth centuries, it was often condemning them to one by slow torture while crossing the Atlantic. (Paying passengers didn't fare much better.) The trip took anywhere from four weeks to three months, during which passengers grappled with impossibly crowded quarters, fatal fevers, and rancid rations. The wonder is not that the mortality rate was shockingly high but that it wasn't higher.

Travelers must have suffered from acute thirst every hour they were at sea. Fresh water had to be carried on board and stored, and storage soon turned it brackish. Aggravating their thirst was the fact that folks subsisted "on salt"—their rations consisted almost entirely of preserved meat and ship's biscuit (hard, thick crackers). The meat spoiled despite its salt, and insects infested the biscuit. Scurvy and malnutrition's other maladies added to the suffering and deaths.

Tragically, the trip to America can be as torturous and fatal for modern immigrants as it was for their colonial counterparts. Despite quantum leaps in technology that put jumbo jets with meals, bottled water, reclining seats, and comfortable temperatures within the budgets of many immigrants (some of whom pay hundreds and thousands of dollars to illegal "guides"), many still spend weeks, months, or even years arduously traveling to the United States. They languish on homemade rafts and die in unventilated trucks and trailers; those who survive are often sick, scared, and starving when they finally arrive. The U.S. government and its unconstitutional control over them are almost entirely to blame for this monumental misery (the rest of the credit goes to the tyrannies immigrants are fleeing).

Because it has abandoned the logic and morality of natural law, U.S. policies on immigration are as senseless as they are cruel. For example, Cuban refugees risk everything, including life itself, to flee their island gulag in whatever will float. Yet under 1995's "wet foot/dry foot" agreement between Fidel Castro and Bill Clinton, Cubans who reach U.S. water but not U.S. soil are forcibly returned to Castro's clutches. As they near the end of their 90-mile voyage from Cuba to Florida, when they are most vulnerable, the Coast Guard "interdicts" these refugees, sometimes dousing them with pepper spray and shooting them with water cannon to prevent their wet feet from ever becoming dry.

Allowing government to control immigration guarantees that barbaric and baffling policies will continue to kill people and ruin lives. It also means that the state decides who gets in; the country's character and composition are determined by a handful of bureaucrats rather than the decisions of millions of individuals. And each restriction government imposes on immigrants, each limit it sets to their freedom, limits ours as well.

When immigrants have to show papers proving they belong here, we do, too. When the State is permitted to brutalize them, it practices tactics it can turn on us. Perhaps most frightening of all is the reflection that a government strong enough to keep others out is also strong enough to keep us in.

As always, those who ask Leviathan to shackle others often wind up wearing the chains themselves.

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The Freedom to Move

BY OSCAR W. COOLEY AND PAUL L. POIROT

The freedom of the individual to move toward greener pastures, wherever they may seem to be, has been a vital part of the freedom of commerce—the freedom of choice that has constituted the truly distinctive characteristic of "the American way."

In view of our long experience of near-perfect freedom to move about as each might choose, some of us may not realize the limitations that confront people in many other parts of the world who might like to move toward something better. Many who might choose to enter the United States, peacefully observing our laws and paying their own way, are denied entry. Our community slogans now seem to read: "Welcome to all peaceful and productive newcomers—except foreigners." And a foreigner here is an individual who has crossed a special political line, supposedly which bounds "the land of the free"!

Our community slogans now seem to read: "Welcome to all peaceful and productive newcomers—except foreigners." And a foreigner here is an individual who has crossed a special political line, supposedly which bounds "the land of the free"!

If it is sound to erect a barrier along our national boundary lines, against those who see greater opportunities here than in their native lands, why should we not erect similar barriers between states and localities within our nation? Why should a low-paid worker—"obviously ignorant, and probably a Socialist"—be allowed to migrate from a failing buggy shop in Massachusetts to the expanding automobile shops of Detroit? According to the common attitude toward immigrants, he would compete with native Detroiters for food and clothing and housing. He might be willing to work for less than the prevailing wage rate in Detroit, "upsetting the labor market" there. His wife and children might "contaminate" the local sewing circles and playgrounds with foreign ways and ideas. Anyhow, he was a native of Massachusetts, and therefore that state should bear the full "responsibility for his welfare."

Those are matters we might ponder, but our honest answer to all of them is reflected in our actions—we'd rather ride in automobiles than in buggies. It would be foolish to try to buy an automobile or anything else in the free market, and at the same time deny any individual an opportunity to help produce those things we want.

Our domestic relationships would be harmed seriously by restraints upon man's freedom to migrate. But why shouldn't the same reasoning hold for our foreign relationships?

Fear No. 1: The "melting pot" might fail to assimilate newcomers. This notion has as little merit as the idea that a third-generation Yankee's digestive tract isn't capable of assimilating a bunch of carrots grown by a foreign-born Japanese or Italian vegetable gardener. The assimilation of a foreign-

The late Oscar Cooley was an economics professor at Ohio Northern University. Paul Poirot (1915–2006) was editor of The Freeman *until 1987. This article was excerpted from a pamphlet originally published by FEE in 1951 and was published in* The Freeman *in January 1986.*

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born person is accomplished when the immigrant willingly comes to America, paying his own way not only to get here but also after he arrives, and peacefully submitting to the laws and customs of his newly adopted country. Freedom to exchange goods and services voluntarily in the market place is the economic catalyst of the American "melting pot." Christian-like morality is the social catalyst—and if it has come to be in short supply among native Americans, the blame for that shortage should not be laid upon our immigrants.

Fear No. 2: The "wrong kind" of people might come to America. The danger that "a poorer class" might come from Asia or Africa or Southern and Eastern Europe and contaminate our society undoubtedly seems real to any person who thinks of himself as a member of a superior class or race. Such a person, like any good disciple of Marx, is assuming the existence of classes and is convinced that he is qualified to judge others and to sort them into these classes.

Perhaps what is feared is the importation of a new idea of the relationship between the individual and his government. If that has been our fear, it very well might have been justified. For America has been rapidly substituting a socialistic State control for the traditional system of private enterprise. But let us not mistake persons for ideas; the ideas are the root of the problem. Migration of persons is not a reliable measure of the flow of ideas.

Fear No. 3: Immigrants might deprive our own workers of jobs and depress the wage scale. The fear that immigrants might take the jobs of American workers is based on the fantasy that the number of jobs to be filled within our economy is strictly limited. Individuals still do—and undoubtedly always will—entertain unsatisfied desires for more and more goods and services, which industrious and ingenious individuals constantly are producing in response to opportunities. If there is freedom to think, to trade, and to move, then opportunities for new, creative jobs are not limited to the wilderness or a spot of idle land.

The fear that heavy immigration of workers would depress the wages of native workers is an outgrowth of socialist doctrine. Socialism is so concerned with consumption and "equitable distribution" that it neglects the source of production. It fails to recognize that there can be more and more to consume only if capital and tools are first produced to give leverage to the productive power of man.

Can we hope to explain the blessings of freedom to foreign people while we deny them the freedom to cross our boundaries? To advertise America as the "land of the free," and to pose as the world champion of freedom in the contest with communism, is hypocritical, if at the same time we deny the freedom of immigration as well as the freedom of trade. And we may be sure that our neighbors overseas are not blind to this hypocrisy.

A community operating on the competitive basis of the free market will welcome any willing newcomer for his potential productivity, whether he brings capital goods or merely a willingness to work. Capital and labor then attract each other, in a kind of growth that spells healthy progress and prosperity in that community. That principle seems to be well recognized and accepted by those who support the activities of a local chamber of commerce. Why do we not dare risk the same attitude as applied to national immigration policy?

Our collective abandonment of the economic system of the free market leaves for us the controlled communal life, where everyone wants to be a consumer without producing anything.

The Basic Problem

Our immigration policy merely reflects the existence of this serious internal problem in America. Our present policy toward immigrants is consistent with the rest of the controls over persons which inevitably go with national socialism. But the controlled human relationships within the "welfare state" are not consistent with freedom. Great Britain once thought she could deny freedom to American colonists. And now, her own people have traded their freedom for nationalized austerity. Even a "prosperous" modern America can ill afford traveling that same course. If we do, our community, too, will lose its capacity to attract newcomers. Then we wouldn't need an immigration policy. But who among us would want to remain in a community where opportunities no longer exist?

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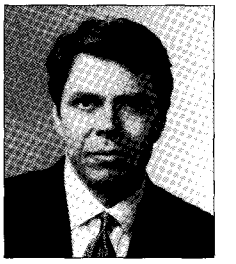

On Bad Arguments

BY DONALD J. BOUDREAUX

It's regrettable but not surprising that many people are ignorant of economics, of history, and of all the other disciplines that are important to our understanding of society. Equally regrettable, but much more surprising, is the number of people who simply are unable to think clearly.

People who think clearly understand how to distinguish logical from illogical arguments. These people also recognize that an argument's relevance is just as important as its logical coherence. I've become more and more convinced that many of the disputes that typically rage over this or that public-policy issue would disappear if only people were better, clearer thinkers.

Here are two kinds of fallacies I've recently encountered that reveal not so much an ignorance of economics or of some other academic discipline but instead, a wearisome inability to think straight.

Ad hominem arguments. At our blog, Café Hayek, Russ Roberts and I often write in favor of free trade. Invariably, each post brings comments and e-mails by persons alleging that we favor free trade only because we are tenured college professors. The allegation is that the relative security of our jobs is what prompts us to oppose protecting domestic firms and workers from foreign competition. Presumably, those who level this allegation believe that once Russ and I are revealed as being employed in relatively secure jobs, the argument for free trade collapses.

An argument's merits are independent of the identity of the persons who advance it. Whether or not free trade increases or decreases per-capita GDP, ordinary people's standard of living, or total employment obviously has nothing to do with the kind of job a free-trade advocate has. To dismiss the argument for free trade simply because one of the persons advancing the argument is thought to have a secure job and hence nothing to lose and everything to gain from free trade would be like dismissing the argument for freedom of religion on grounds that priests and rabbis are among the persons who support this freedom.

Of course, a person's personal situation might indeed bias his evaluations of arguments in favor of, or opposed to, policies that affect him closely. Likewise, an individual's personal distance from the likely actual consequences of a particular policy might cause him to think less carefully about that policy than he would if he stood to be affected more heavily. These practical realities, though, don't affect an argument's merits. When I argue for free trade I present chains of reasoning and empirical data. Challenges to these substantive elements of my argument are fair and relevant. What's *un*fair is to avoid engaging the reasoning and empirical data; what's *ir*relevant are personal accusations flung at those who advance substantive arguments.

To ignore substantive issues and instead to dismiss an argument simply because of the identity of an argument's proponents is verbal barbarism.

A related problem with ad hominem arguments is that if the arguer's personal situation is the chief criterion for evaluating his case, there's no logical way to evaluate it if someone else in a different situation also makes it. Notice that ad hominem arguments implicitly assume that a case is illegitimate if advanced by someone with nothing to lose (or with something to gain) by its acceptance. It follows that the only valid argument is one made by people with *something* to lose. So if one lone midwestern auto worker argues in favor of free trade despite the relative precariousness of his job, is the validity of the case thereby reestablished?

More interestingly, if we are entitled to dismiss someone's arguments about a policy simply because he will gain (or will not be harmed) if the policy is adopted, then we can dismiss anti-free-trade arguments made by workers who fear they will lose their jobs if trade

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becomes freer. We need not engage the substantive arguments of such persons. So if a steel worker from Ohio or textile worker from South Carolina argues against free trade, the "logic" of ad hominem argumentation entitles us to dismiss this solely on the grounds that he stands to gain materially if these protectionist arguments are accepted.

Without denying that people are frequently led by their personal interests to accept or reject arguments, it remains true that the merits and demerits of any argument are independent of the identity of those who advance or oppose it.

Economics is not politics. Another illogical (and especially annoying!) allegation routinely hurled at those of us who favor free markets is that we are necessarily political partisans, usually of the GOP. The "reasoning" goes like this: Boudreaux argues in favor of repealing the minimum wage; George Bush seems skeptical of raising the minimum wage; therefore Boudreaux supports all, or the great majority, of the Bush administration's policies.

It's exasperating to be accused of supporting the entire Bush agenda simply because of a few (usually only superficial) similarities between what I endorse and what George Bush or the GOP endorses. And it's downright maddening to be told—as I am told frequently—that my support for, say, cutting taxes is illegitimate because tax-cutter George Bush detains people without trial at Guantanamo Bay or because he imposed tariffs on steel.

Why do so many Americans insist on seeing every public-policy issue as a battle between Democrats and Republicans? And why assume that intellectual and moral arguments about policy issues are little more than highbrowed versions of political battles?

Politically Possible?

Which reminds me of a final frustration: the popular assumption that an argument about the merits of a potential change in policy is legitimate only if that policy change enjoys a realistic chance of being adopted in the foreseeable future.

Correspondents tell me more times than I can count either that my position on X is illegitimate *because* it has no chance of being adopted, or that I should stop wasting my time championing politically impossible causes so that I can devote my time to pushing for changes that are "possible."

The legitimacy of a policy proposal is not determined by its political prospects. For example, the argument for separation of church and state would have stood no chance of being accepted in medieval Europe. But the merits of the argument then would have been no different from their merits today. Almost all arguments for liberty were at one time accepted by just a tiny handful of people and enjoyed no prospect of being adopted in the foreseeable future. Those of us alive today owe much to those courageous thinkers of centuries ago who challenged the supremacy of the state over the individual even though their chances of personally witnessing the popular success of their arguments were nil.

Intellectual skepticism and humility are always necessary. None of us should ever become so confident in his own genius that he refuses to take seriously challenges to his beliefs and arguments. But not all challenges deserve serious attention. Challenges that are illogical, challenges that display a fundamental absence of clear and logical thought, *should* be dismissed out of hand. To engage them is to waste time—illogically.

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Sales, Flat, or Spherical, Tax Reform Isn't the Answer

BY GENE CALLAHAN

Lately there has been a flurry of interest in tax reform, typically aimed at making compliance less onerous, removing the incentive for special-interest lobbying, and reducing the size and intrusiveness of the tax-collection agency. While few people will reject those ends, that does not imply that the attempt to achieve them is the optimal use of the inevitably limited time and energy that citizens choose to devote to political activities. Of particular relevance to readers of this magazine is whether friends of liberty ought to focus on such reforms to forward the cause of freedom.

There are also schemes circulating for *supplementing* the current income tax with, for example, a sales tax or VAT (value-added tax), but such plans are unlikely to gain much support from libertarians, given that they pose the obvious danger of providing the government with an additional way to collect revenue. Since they threaten to merely increase the overall tax burden on society without offering, from a libertarian point of view, any compensating benefits, I will not address them in this article.

However, suggestions for replacing the income tax with a sales tax, or simplifying it by taxing everyone at a single rate and eliminating all deductions (a "flat" tax) *have* caught the fancy of some libertarians. The main attractions of these ideas are that substituting a sales tax or flat tax for the current income tax appears to ease the burden of tax compliance. A sales tax in particular does not seem to penalize savings and investment the way an income tax does, and the promoters of such policy changes contend that their new system of taxation will produce results closer to those that would come about on the unhampered market than does the existing apparatus.

One popular proposal along such lines has recently been described in *The Fair Tax Book*, coauthored by talk-show host Neal Boortz and Georgia congressman John Linder. Because of its prominence, I will use it as a paradigm for all plans of its kind. I believe that the problems it contains are endemic to other similar schemes; so my case against Boortz and Linder also applies more generally.

Suggestions for replacing the income tax with a sales tax, or simplifying it by taxing everyone at a single rate and eliminating all deductions (a "flat" tax) have caught the fancy of some libertarians.

The authors under discussion present their alternative to our present system as a virtual cornucopia pouring forth blessings on the American people. Implementing their idea, they contend, will do away with the oft-reviled IRS, reduce the effort devoted to complying with the tax code to almost nil, greatly lift the living standards of the poorest Americans, reverse the trend of U.S. firms relocating overseas, and provide a tremendous boost to the nation's economy. Clearly, if these promises are realistic, everyone should enthusiastically support their plan. However, a clear-sighted analysis of the proposal reveals

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that the case for predicting these benefits is constructed on a foundation riddled with wishful thinking and flawed logic.

For example, Boortz and Linder argue that their tax system will greatly boost the purchasing power of most Americans' incomes, since it eliminates the portion of the cost of every good that currently stems from the seller's tax burden. However, their argument relies on a ludicrous assumption as to where the incidence of present taxation actually falls: On the one hand, they claim that eliminating the income tax will reduce the price of what you buy roughly 20 or 30 percent because producers all pass the tax they pay on to you through higher prices. On the other hand, they also point out all the money you'll save by no longer paying your own income tax. Apparently, unlike those involved in making everything you buy, you can't just pass on that tax to others. It seems the incidence of the income tax falls entirely on one special segment of American society: the readers of *The Fair Tax*! The authors are guilty of counting the savings their readers will see from ending the income tax twice, once in the price of the things they buy and again in their own paychecks. In reality, getting rid of any tax will result in some combination of lower prices and higher incomes, the proportion depending on the particular circumstances of each case. But the total of the two effects will only sum to the gross reduction in taxation, and certainly not to double that figure!

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Another supposed advantage of the Fair Tax is that, unlike the present situation where taxes are withheld from every paycheck, obscuring the share of one's income that the government takes, the Fair Tax will be clearly visible, listed on every sales receipt. However, given that it would be a ubiquitous aspect of all one's shopping, it is hard to see why its presence won't fade from view just as readily as the income tax has through withholding. After all, workers today get a "receipt" with every paycheck that plainly shows how much of their salary went straight to Uncle Sam, but that has not solved the problem.

IRS Unnecessary?

Another curious claim on the part of the authors is that the Fair Tax will make the IRS unnecessary. Apparently, people will simply pay this sales tax with no need for an enforcement agency. No one will ever claim that what are really retail sales are wholesale, and no one will ever hide cash transactions from the government—all because we've changed how we collect a tax burden that remains just as large as it is today.

To illustrate the lack of realism on display, I'll offer just one example of how the Fair Tax could be avoided (with a little imaginative effort the reader will probably be able to come up with many others): the tax is imposed only on *final* sales, meaning those to consumers, and not on purchases made by producers along the way to that end point. So let's say some executive is tired of paying 23 percent extra—that's the sales tax rate our authors envision—on everything he buys. The way around the tax is to have the firm pay for as much of his consumption as possible, by devising some way to portray buying the items as important business expenses rather than personal purchases.

Boortz and Linder will no doubt respond that such a practice will be illegal, but that's not the point. To catch people at such a game requires an investigative body on the lookout for its taking place—the players are not going to turn themselves in, nor will those uninvolved easily spot the activity and report the participants to the authorities. Even with today's comparatively low sales taxes imposed by state and local governments, it is common for small-business owners to offer a customer a discount for paying in cash, thereby splitting the savings from tax avoidance between the two parties. The Fair Tax rate, three or four times higher than its present counterparts, will promise a proportionally larger reward for successfully dodging it. Fair Tax advocates may not *call* the agency tasked with enforcing compliance with the new law the IRS, but they will surely require such an agency if they plan to maintain government revenue at anywhere near its current level, which is a crucial element in their sales pitch.

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Moving Offshore

The contention that this kind of tax reform will stem the tide of American businesses relocating overseas relies on firms taking into account the tax impact of corporate decisions. If moving headquarters to some tax haven, such as Bermuda or the Cayman Islands, can significantly lower the firm's tax costs, then the move is likely to get serious consideration. It is true, therefore, that eliminating corporate taxation, as Boortz and Linder propose to do, will be an attractive change in the eyes of multinational companies. However, executives do not consider *only* corporate taxes in deciding where to locate. The taxes they and their employees will personally have to pay, as well as the amount the local tax system adds to the cost of the products purchased within the country, are also relevant factors. Therefore, the best bet for a nation wishing to retain existing businesses and attract new ones is to have a low *total* tax burden, rather than to eliminate one form of taxation while seeking to completely offset the lost revenue by introducing a new method of collection.

To be fair to our authors, I will note that they also suggest their support for reducing the overall tax take, but they have decided to separate that issue from their tax proposal and focus on the latter, since they believe it would prove highly beneficial even without any tax cuts. This, I suggest, is a major error.

There is a subtle matter of economic theory, expounded by the great Austrian economist Ludwig von Mises, that is worth examining here since it has great bearing on the topic at hand. In his crowning work, *Human Action*, Mises points out that the actual burden of any tax is determined by the market process rather than by the taxing authority. The deep import of Mises's contention can easily be overlooked because it seems at first glance to merely reiterate a standard lesson contained in introductory economics courses. It is commonplace for beginning students to encounter a demonstration of how the portion of a tax on, say, alcohol, that is paid by the buyer versus the portion borne by the seller is quite independent of the government's decision as to which party is legally obligated to pay the tax. If, for example, there were only one supplier of alcohol, while drinkers' demand for booze dropped very little in response to increased liquor prices, then the consumers would wind up bearing most of the burden of any new tax, even if officials assign the seller the responsibility for remitting it. Indeed, Boortz and Linder sometimes seem to grasp this idea, although they ignore it in contending, as I noted, that all the cost of the present income tax is passed on through higher prices.

In his crowning work, *Human Action*, Mises points out that the actual burden of any tax is determined by the market process rather than by the taxing authority.

But Mises's insight goes well beyond the typical analysis. The mainstream textbooks analyze the market for the taxed good as if it were entirely self-contained, isolated from the rest of the economy. But in the real world the supply and demand for any good is deeply intertwined with the markets for all alternative goods and services that might be produced or consumed. That means that although legislators might be seeking to tax the alcohol industry, in reality it could turn out to be, say, truck drivers who are hardest hit, if liquor companies shift toward shipping by rail in response to their new cost. Or perhaps soft-drink manufacturers will be the group most affected, if consumers decide to forgo a few sodas a week to maintain their previous level of alcohol consumption at the now higher price.

One crucial ramification of understanding that the market determines the true incidence of a tax is that the particulars of how a government collects its revenues are of decidedly secondary importance. Of course, it is possible to design tax schemes so Byzantine that trying to comply with them is even more onerous than paying the taxes themselves. But in general the market process will distribute the true incidence of a nation's tax system according to the cumulative dictates of individuals' supply-and-demand decisions, thwarting policymakers' dreams of directing the burden by top-down planning.

Another fundamental error common to tax-reform schemes like the Fair Tax is that their proponents evaluate the attractiveness of their favored plan in an ideal

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world where powerful and wealthy special interests won't greatly influence its realization. They then compare that fantasy scenario with the messy reality of the tax code we have today. But any method of taxation that attempts to divert as much of the output of society's productive activities into the coffers of the state as does the current one will inevitably prompt intense efforts by a multitude of parties to tailor the actual details of the system to their liking. I see no reason to imagine that their lobbying would not complicate any "reformed" tax code until it is as convoluted as what we have today. The only reform that is likely to avoid that fate is a dramatic reduction in the total tax take, thereby greatly decreasing the potential payoff of successfully tilting the system in one's favor.

I don't mean to rule out the possibility that one or another tax reform might represent a genuine improvement over the present situation. But the key question is whether such proposals deserve any significant portion of the necessarily limited attention that libertarians can devote to policy issues. A small reduction in the penalties currently imposed for drug crimes would no doubt be a step forward, but I suggest that focusing on such a goal would be a distraction from the real libertarian aim of repealing all laws violating individuals' freedom to decide on their own what to eat, drink, and smoke.

Similarly, while the hope of achieving any large decrease in the level of taxation may appear remote today, that hope will only recede further into the distance if we dissipate our energy in marginal battles that, even if won, would leave the core of the problem untouched.

Those who desire to relieve the crippling effect that today's massive states have on their citizens ought to focus on reducing the share of private wealth that governments are able to claim as their due. To instead concentrate on tinkering with the means by which that claim is effected is like a doctor treating a person for athlete's foot even while the patient is suffering a heart attack.

Worse Than Thieves

When your money is taken by a thief, you get nothing in return. When your money is taken through taxes to support needless bureaucrats, precisely the same situation exists. We are lucky, indeed, if the needless bureaucrats are mere easy-going loafers. They are more likely today to be energetic reformers busily discouraging and disrupting production.

—**Henry Hazlitt**, *Economics in One Lesson*

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Capitalism and Democracy

BY ARTHUR E. FOULKES

I recently heard a prominent American politician tell how a "chill" went up his spine when he heard someone question the importance of democracy. How could anyone doubt the value of democracy? he wondered. Fortunately, he said, he soon realized that by "democracy" his (European) interlocutor really meant "capitalism." Whew, he thought, that's all right, then. But is democracy really more important than capitalism?

One immediate problem we face discussing democracy and capitalism is that both terms have different meanings for different people. For some people "capitalism" is synonymous with "corporatism" or "crony capitalism," which combines nominally private enterprises with a highly interventionist political system—indeed, something like the U.S. system today. Likewise, "democracy" for some is synonymous with social and economic equality. For them, no democracy can exist when some people live in poverty, some cannot read, and others live in mansions or attend Ivy League schools.

For my purposes, however, democracy will be defined simply as "the people rule," or, more specifically, "majority rule." While it's true that almost everyone would agree that democracy also requires certain guaranteed freedoms, such as freedom of the press, freedom of speech, and the right of habeas corpus, even these freedoms are subject to limitations when public opinion permits—as any number of examples from periods of crisis in U.S. history can demonstrate.

Capitalism, on the other hand, will here refer to a free-market economy with guaranteed property rights—a laissez-faire society. Indeed, a free market is simply one in which the unhampered exchange of property titles can take place. Thus in a truly capitalist society, government's role would be strictly limited to protecting property rights (including the right to our bodies) since virtually any other government activity would almost certainly involve the violation of those rights. Thus by this definition, the economic system capitalism necessarily implies a (classical) liberal political system.

Democracy, however, makes no promises regarding the size and scope of government. Indeed, it could be argued that democracy is inherently hostile to limited government since many citizens in a democracy (including many so-called "capitalists") soon find they can successfully lobby government officials for subsidies, trade protection, and other legal privileges. Likewise, elected officials soon learn it is in their interest to strategically grant economic favors for their own political and electoral needs. As economist Randall G. Holcombe noted in "Liberty and Democracy as Economic Systems" (*Independent Review*), "[T]here are inherent tensions between democracy and a free-market economy that make it difficult to maintain a stable system. In particular, the ascendancy of democracy threatens the survival of the free-market economy, which was built on a foundation of liberty. . . . [T]he evolution of democracy has come at the expense of liberty."

Indeed, a free market is simply one in which the unhampered exchange of property titles can take place.

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Or as economist John Wenders wrote in *The Freeman*: "Democracy evolves into kleptocracy."

The original design for the American government was one that attempted to combine limited democracy with limited government. But it didn't take long for this ideal to begin to dissolve.

One of the first blows came when George Washington was president, during a debate over the meaning of the Constitution's Necessary and Proper clause. Washington and a congressional majority planted some of the first seeds of big government when they accepted the argument of Treasury Secretary Alexander Hamilton, who contended that the clause (taken along with the fact that the Tenth Amendment's reservation of state powers failed to include the word "expressly") gave the federal government powers beyond those specified in Article I, Section 8. Hamilton's vision won the day despite opposition from Thomas Jefferson and the Constitution's principal author, James Madison, who feared that "such a broad interpretation of the 'necessary and proper clause' would allow the federal government a reach far beyond the intentions of the Constitution's framers." Within 20 years the Supreme Court would endorse Hamilton's view.

Despite this and some other notable setbacks in the nineteenth century, for most of the first hundred years of American history, Congress, the president, and the courts took fairly seriously the idea that the federal government should be limited and that the Tenth Amendment—stating that any powers not delegated to the national government by the Constitution are reserved to the states or to the people—still had some meaning. The real damage came in the twentieth century. As the Cato Institute's Roger Pilon told a Senate subcommittee in 2005:

> The great constitutional change took place in 1937 and 1938, during the New Deal, all without benefit of constitutional amendment; but the seeds for the change had been sown well before that, during the Progressive Era. . . .
>
> Search the Constitution as you will, you will find no authority for Congress to appropriate and spend federal funds on education, agriculture, disaster relief, retirement programs, housing, health care, day care, the arts, public broadcasting—this list is endless. . . . [T]he Constitution says, in effect, that everything that is not authorized—to the government . . . is forbidden. [The] Progressives turned that on its head: Everything that is not forbidden is authorized.

Conventional wisdom still holds that the Progressive era was in large part a response to a growing monopolization and concentration of economic power in fewer and fewer hands around the start of the twentieth century. The exact opposite is more the case.

How We Got Here

I recently asked a class of mine to speculate just how the United States moved from having a national government that Madison described as having powers that were "few and defined" to one that doesn't hesitate to spend billions of tax dollars on everything from space exploration to "pro-marriage programs." None of my students could say, but it is interesting to note that a significant shift away from liberty and toward interventionism came at the behest of so-called "capitalist entrepreneurs" during the Progressive period.

Conventional wisdom still holds that the Progressive era was in large part a response to a growing monopolization and concentration of economic power in fewer and fewer hands around the start of the twentieth century. The exact opposite is more the case. Unrelenting competition and market uncertainties led large business interests to lobby government for regulations designed to stifle their competitors. As Marxist historian Gabriel Kolko noted in his classic, *The Triumph of Conservatism*:

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> Competition was unacceptable to many key business and financial interests. . . . As new competitors sprang up, and as economic power was diffused throughout an expanding nation, it became apparent to many important businessmen that only the national government could rationalize the economy. . . . Ironically, contrary to the consensus of historians, *it was not the existence of monopoly that caused the federal government to intervene in the economy, but lack of it* [emphasis added].

Yet this increase in government power did not take place in a vacuum; public opinion had to allow it. As Robert Higgs noted in his important book *Crisis and Leviathan,* "Ideology, which some refer to more vaguely as 'public opinion,' must have played an important part, at least a decisive permissive role. . . . If people generally had opposed Big Government on principle, free markets could scarcely have been abandoned as they have been during the past seventy years."

A related view takes the importance of ideology a step further by suggesting that the Constitution *never really limited the government at all.* Former FEE president Donald Boudreaux writes, "[T]he constitution is the dominant ideology within us—an ideology that determines what we permit each other to do, as well as what we permit government to do. No words on parchment . . . will ever override the prevailing belief system of the people who form a polity."

In other words, ideas count more than articles and amendments. As the American people have come to expect more from their government, the size of that government has grown and their "constitutional tolerance" has grown with it, all but washing away America's classical-liberal roots. Modern political leaders have found this to their advantage. As government expands, their political power and influence expand with it. Fewer and fewer aspects of life are left to private individuals, while more and more decisions are made by government officials. This may be called "democracy," but it is clearly the substituting of the public and the political for the private and the voluntary—that is, the coercive for the peaceful.

As noted, many contemporary critics of capitalism believe a "true" democracy means a powerful state role in promoting economic equality, "fair" labor conditions, "socially responsible" economic growth, and so on. Their plans always involve greater restrictions on private property rights and other personal freedoms. And while they believe they are promoting equality, their vision necessarily implies a tremendous *inequality* of political power. As economist Peter Bauer once noted, "The successful pursuit of the unholy grail of economic equality would exchange the promised reduction or removal of differences in income and wealth for much greater actual inequality of power between rulers and subjects."

"Fat Cats" for Capitalism?

To promote their case, many of capitalism's critics assert that only corporate "fat cats" benefit from economic freedom. But as Madsen Pirie noted in his essay "Nine Lies about Capitalism," "If capitalism really served the interests of businessmen, then more of them would be in favor of it." As noted, some of the most damaging and powerful opponents of truly free markets have been, and continue to be, business leaders. This is unsurprising. When markets are free, businessmen are the servants of consumers and those who fail to satisfy consumers are ultimately doomed. Yet it is this uncertainty that leads to greater overall prosperity. The profit (and loss) system, so decried by anti-capitalists, is the springboard for constant innovation and greater productivity—in other words, improved living standards for everyone.

Democracy and liberty can coexist only if public opinion favors private property rights and individual freedom over coercion. Capitalism, not democracy, implies just this sort of liberty; democracy only implies that government is directed by mass opinion. Today, because liberty is often confused with the "right to vote," true liberty is more and more threatened by expanded and expanding "democracy." Yet, as John Wenders has noted (in words I would love to see emblazoned on a monument somewhere in Washington), "Freedom is not measured by the ability to vote. It is measured by the breadth of those things on which we do not vote."

To limit the reach of government in a democratic system may indeed be limiting the reach of democracy itself. Yet this is no bad thing if by limiting the reach of democracy we are in turn securing liberty.

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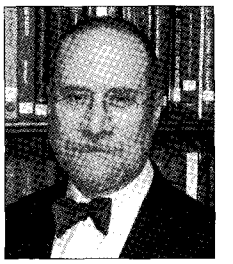

Eye on the Ball

BY SHELDON RICHMAN

Like clockwork, on Aug. 28 the *New York Times* produced another page-one story purporting to show that living standards for many Americans have fallen, this time because wages in recent years have failed to keep up with inflation. This has been happening despite rising productivity and even taking into account the shift from cash to noncash benefits, such as medical insurance. Meanwhile, profits are up.

In other words, workers aren't getting their "fair share" of economic growth.

The story was followed by a census report showing that while household earnings rose, individual earnings fell. Moreover, the Census Bureau found that the poverty rate has improved only slightly.

The next thing to happen was equally predictable. Those who are uneasy about the moral status of the market economy claimed confirmation in the numbers. And those who favor the market either disputed the numbers, arguing that the economy has produced a better outcome than the one portrayed, or said the results were as they should be, given current supply and demand for labor and products.

That is, both sides agreed that these numbers reflect, or purport to reflect, the outcomes of an economic system in which market forces are permitted to operate freely. But here we have a problem. Market forces are and have been systematically distorted through government intervention. There is no laissez faire. While American society is organized on market lines, the market is interfered with all along the way. So whatever the current income "distribution" may be reflecting, it does not reflect a system of economic freedom unrestricted by government fiat.

Income statistics are like scriptures or the Constitution: seek and ye shall find. This is not to say they can tell us nothing, but the social world is complex, and it seems awfully easy to find whatever you're looking for. All you have to do is start your graph at a year that will yield the curve you want. Or leave out some things. Or use an index that overstates, or understates, inflation. Or move back and forth between medians and averages, or between individuals and households. There are many ways to get where you're going.

Spectators to these statistical snowball fights will choose sides according to their values. Those who think the market is morally wanting will accept the gloomy picture. Those who see no moral deficiency will embrace the optimistic account. Each side will feel confirmed in its worldview.

Critics of the *Times* analysis seem to have the stronger case, though, as noted, the picture is complex. You only have to watch people of various socioeconomic categories walk down the street bearing a variety of electronic conveniences to see that there's something counterintuitive about the claim that economic conditions have stagnated or deteriorated over the last 30 years—though how much easy credit (thanks, government) has to do with this is unclear.

Nevertheless, the contest over statistics distracts us from something more important.

In *Anarchy, State, and Utopia*, Robert Nozick argued that a given wealth or income distribution can't be judged outside its historical context. The morally relevant question to ask is not "Where are we?" but rather, "How'd we get here?"

In a market-based economy wealth and income are the results of transactions. There is no central store from which a custodian distributes largess to various groups arbitrarily. In the normal course of events, unequal wealth and income are to be expected because some people will make better economic decisions than others. A few entrepreneurs saw the future value of the resources that go into fiber-optics long before the rest of us did. High incomes are the rewards consumers bestow

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on those who act on such insights. It is a mistake to think that tampering with the rewards system would have no effect on the decisions of producers.

Likewise, the "shares" of income "allocated" to employers and employees are determined by countless micro transactions. This is not a macroeconomic process.

The key issue is whether transactions are voluntary. If so, the resulting spectrum of wealth and income, and their division among economic groups, are legitimate because they emerge from the preferences of everyone who participates in the market. If not, the legitimacy of the division is tainted because some have forcibly substituted their preferences for those of others.

Thus in Adam Smith's "system of natural liberty," where transactions are consensual, economic inequality is not a matter for public policy. The "proper" division of wealth is the one that results from the free exchanges people make. There is no criterion external to the market process.

However, we live not in a system of natural liberty but in a mixed corporatist economy, in which some transactions are involuntary (eminent domain, tax transfers) and even voluntary transactions are touched by coercion. For example, why is there an inflation for wages to keep up with? Government depreciates the currency and increases the cost of living through central-banking policies. That's a forced transfer of purchasing power from most worker-consumers to politicians and privileged interests. Moreover, an array of government policies push up the price of basic commodities, such as oil, again raising the cost of living.

Other transactions are tainted by force. When you buy sugar, that voluntary exchange is affected by the forcible exclusion of large quantities of Latin American and African sugar from the U.S. market. When you buy a house or rent an apartment, that exchange is affected by zoning laws, government land-holdings, and myriad other interventions. When you purchase medical insurance (or are unable to), that exchange (or potential exchange) is colored by regulations that permeate the insurance and medical industries. Nothing is untouched by government, that is to say, coercion. And since free exchange generates processes that are socially beneficial, exchange that is forced or tainted by force is detrimental.

A Little Freedom Goes a Long Way

If living standards rise under a corporatist system, it just goes to show that even hampered economic liberty improves things. But we mustn't mistake rising living standards for freedom, which is what some market advocates seem to do. It is perfectly consistent to maintain that workers are richer than ever *and* that they are not as rich as they would be in a free market.

As Russell Roberts says, "What keeps my wages high (and yours) is our alternatives." Our focus therefore should be on how the state and its clients limit our alternatives. Why do egalitarian critics of the market demand a higher minimum wage, more-progressive taxation, and demeaning handouts rather than an end to business privileges and other edicts that make it harder to start new enterprises? You'd think someone concerned about extreme income inequality and weak labor-bargaining power would look for ways to promote *more* options, including self-employment opportunities, for workers. While activists think about how employees can get more out of their bosses (which is of dubious general value), they neglect the things that reduce choice: taxes on savings and capital accumulation (including the payroll tax), inflation, licensing, land-use controls, regulations on how to do business, patents, and anything else that raises the cost of setting up enterprises and hiring workers. Bureaucracy is the common man's and woman's enemy. But it's the big protectionist-minded incumbent firm's friend.

When market advocates become preoccupied with income statistics, the interventionists win the home-field advantage because they've directed attention away from interference with voluntary exchange. Market advocates certainly should expose statistical deceit where necessary, but rather than playing defense full time, they would do better to go on offense against those who would interfere with free choice.

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Are Highways Subsidized?

BY RANDAL O'TOOLE

I have always loved trains. I am an ardent cyclist, and I never particularly liked automobiles. So I always took it for granted that the reason most Americans drive and passenger trains have nearly disappeared is that our highways are unfairly subsidized. I felt particularly incensed that the Interstate Highway System, which took business from the railroads, was so heavily subsidized.

As the saying goes, our biggest problems are not what we don't know, but what we think we know that isn't so. One day I looked up the data to find out just how much money federal, state, and local governments spent subsidizing highways. I was stunned to learn:

- The Interstate Highway System was built without a dime of subsidy, being funded entirely with gas taxes and other highway-user fees;
- For the last 60 years virtually no federal money and very little state money other than highway-user fees have been spent on any highways or roads;
- Cities and counties, however, do spend property, income, and sales taxes subsidizing new local roads and street maintenance;
- But these subsidies are partly offset by diversions of federal and state highway-user fees to mass transit and other nonhighway programs;
- Bottom line: user fees cover nearly 90 percent of the total amount spent on highway construction, maintenance, and operations.

In 1919 my home state of Oregon was the first state to dedicate a gasoline tax to highways, roads, and streets. At that time gas taxes cost less to administer than toll roads and as a user fee they seemed to be just as fair. By 1932, when Congress dedicated the first federal gas tax to roads, every other state had followed Oregon's example and nearly 60 percent of the money spent on roads came from such taxes. Eventually, states charged truckers weight-mile fees and vehicle-registration charges. Federal tire taxes were also included in highway funds.

A U.S. Department of Transportation annual report called *Highway Statistics* reveals that in 2004 highway-user revenues totaled well over $100 billion. Nearly $21 billion of this was diverted to mass transit and other nonhighway programs but should still be counted as highway-user fees.

At the same time, nearly $39 billion was spent on highways out of property taxes and other taxes. Of the total amount spent on highways in 2004, then, net subsidies amounted to $39 billion minus $21 billion, or about $18 billion. This is about 12 percent of total spending on road construction, maintenance, and operations such as highway patrols. (See table HF-10 of *Highway Statistics 2004*.)

The myth of interstate highway subsidies is most pernicious because it supports claims that postwar suburbanization is some kind of plot rather than the preferred choice of most American families. Former Milwaukee Mayor John Norquist, for example, argues that interstate subsidies interfered with the free market and that interstate highways built through the hearts of cities drained them of jobs and residents. In reality, federal highway planners originally expected to bypass the cities and it was only lobbying by urban mayors, including Norquist's

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predecessor, that convinced Congress to run the highways through cities. As Harvard transportation professor Alan Altshuler observes, those highways reduced inner-city congestion and probably helped save many downtowns.

While I don't approve of the $18 billion subsidy for other roads, it is trivial compared with the nearly 4.7 trillion passenger-miles carried on American highways in 2004 (*Highway Statistics*, table VM-1). This is less than 0.4 cents per passenger-mile. After adjusting for inflation, back issues of *Highway Statistics* show that the total subsidy over the past 84 years has averaged less than 0.5 cents per passenger-mile. The cost per mile is even lower if we attribute part of it to the 1.1 trillion ton-miles of freight carried on highways each year (*National Transportation Statistics 2004*, table 1-46a).

On a state-by-state basis the subsidies range from 2.6 cents per passenger-mile in Alaska to minus 0.6 cents in Maryland. Eight states in addition to Maryland divert enough money from their gas taxes so that highway users pay more fees than the states actually spend on roads. At the other end of the scale, seven states and the District of Columbia join Alaska in spending more than a penny per passenger-mile in subsidies to roads. Subsidies in the remaining 32 states are between 0 and 1 cent per passenger-mile.

A case could be made that some of these local expenses are not even subsidies to driving. Streets existed and were paid for by local taxes long before automobiles. In most modern subdivisions, developers build the streets and deed them over to the city or county, which then has to pay only for maintenance. Street maintenance, snow removal, and other operations are as important for pedestrians, cyclists, and public safety as for auto drivers. Still, cars dominate many of these streets and auto-user fees should pay for most of their maintenance.

Rail and transit advocates use the myth of major highway subsidies to justify more subsidies to Amtrak and public transit. Yet according to the Bureau of Transportation Statistics, taxpayers pay at least 21 cents per passenger-mile to subsidize Amtrak. Subsidies to public transit in 2004 averaged 65 cents per passenger-mile, says the American Public Transportation Association's *Transit Fact Book 2005*. (For the record, subsidies to air travel are about a tenth of a penny per passenger-mile.)

Amtrak and transit subsidies have been far greater than highway subsidies for at least 35 years. In recent years total transit subsidies have been twice as great as total highway subsidies even though highways carry a hundred times more passenger traffic and thousands of times more freight than transit does.

> The myth of interstate highway subsidies is most pernicious because it supports claims that postwar suburbanization is some kind of plot rather than the preferred choice of most American families.

The Social Costs of the Automobile

While highway subsidies may be minimal compared to the amount of work they perform, I still believed that the automobile imposed large external costs on society. If only we could get people to drive less, for example, our air would be far cleaner.

The Environmental Protection Agency and many American cities have spent millions of dollars on numerous creative programs aimed at reducing driving. The only thing that has worked to clean the air, however, is to clean it at the tailpipe. Thanks to technological improvements, our air is far cleaner today than it was in 1970 when Congress first passed the Clean Air Act.

The average car on the road today produces about a tenth as much pollution as cars in 1970. So even though we drive almost three times as many miles as Americans did in 1970, all our cars together produce less than 40 percent as much pollution. Many new cars today produce just one-hundredth as much pollution as 1970 cars, so the air will continue to get cleaner even as driving increases.

Though air pollution is declining, at least it really exists. Other so-called social costs of the automobile are more ethereal. Various auto critics have charged the

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automobile with "land-use impacts," "the loss of transportation options" (that is, high-cost competitors), and trade deficits due to people buying foreign cars. After a massive study of such claims, University of California economist Mark Delucchi concluded in the *Journal of Transportation and Statistics* that most "rely on outdated, superficial, nongeneralizable, or otherwise inappropriate studies."

Delucchi himself estimates that the total social costs of the automobile average less than 7 cents per vehicle-mile (which, at an average occupancy of 1.6 people per car, works out to around 4.3 cents per passenger-mile). Strangely, most of Delucchi's costs are congestion and accidents. Since these costs are paid mainly by auto users, they may not be social costs at all. Even if 7 cents per mile is correct, Delucchi is the first to point out that "the subsidies to public transit generally are much greater than the external costs of automobile use" ("Should We Try to Get the Prices Right?" *Access*, Spring 2000).

The most recent claim is that free parking is somehow a subsidy or social cost. Some anti-auto advocates think office parks and shopping malls should require their employees and customers to pay for parking. This makes as much sense as requiring businesses to charge their employees to use office equipment or supermarkets to charge rent for shopping carts.

Other auto skeptics claim that the automobile imposes increasing costs on American families. In fact, data from the Commerce Department's Bureau of Economic Analysis show that since 1950 Americans have consistently spent about 9.5 percent of their disposable incomes on autos and driving. Though we actually spend a little smaller share of our incomes on driving today, we drive three times as many miles per capita as we did in 1950 (Census Bureau, *Historical Statistics of the United States: Colonial Times to 1970*).

Some anti-auto advocates think office parks and shopping malls should require their employees and customers to pay for parking. This makes as much sense as requiring businesses to charge their employees to use office equipment or supermarkets to charge rent for shopping carts.

The Benefits of the Automobile

While I once fantasized about the high costs of the automobile, I rarely thought about all the benefits autos have provided. Like suburban critic James Howard Kunstler, I imagined that American life before the automobile was "glorious," with everyone taking trains or streetcars to work from their "magnificent house[s] surrounded by cool porches."

A little digging in history, however, reveals that only a tiny fraction of American city dwellers lived this way before the automobile. Most of them lived in tenements or slums and walked to their sweatshop jobs. With poor sanitation, pollution from nearby industry, and high crime, their lives were a lot less glorious than Kunstler imagines. In fact, as planning historian Peter Hall documents in his book *Cities of Tomorrow*, the original goal of most early twentieth-century planners was to get people out of the crowded cities and into lower-density suburbs.

Planners had little to do with the exodus to the suburbs, however. Instead, the fortunes of the working class turned around when Henry Ford developed the moving assembly line in 1911, allowing him to double wages while halving the price of his cars. Suddenly ordinary workers could afford to buy the cars they made. Their increased mobility allowed them to move to single-family homes that previously were occupied only by the wealthy and middle-class workers who could afford train or streetcar fares.

Wide-scale auto ownership dramatically increased American mobility. History's most intensive network of intercity passenger trains and urban transit was found in the United States in 1920. In that year the average American rode about 1,200 miles per year on these passenger trains and urban transit lines. Today, the average American travels about 16,000 miles per year by automobile.

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This 12-fold increase in mobility has generated numerous benefits. It is no coincidence that, after adjusting for inflation, worker incomes increased by more than seven times during the twentieth century. This is partly because the automobile gave people access to more and better-paying jobs, but it is also because the automobile transformed those jobs.

Ford's horizontal moving assembly lines required far more land than the vertical factories that preceded them. One of Ford's plants was a mile wide, one-and-a-half miles long, and employed 100,000 workers—far more than could live within easy walking distance.

The moving assembly lines produced a synergistic effect: assembly lines increased incomes so workers could afford to own cars, and increased worker mobility allowed more industries to build far-flung factories using moving assembly lines. These industries moved from urban centers to suburban areas where land was less expensive. Such industrial sprawl effectively ruled out other forms of commuting, so Americans could not possibly have the incomes they enjoy today without cars.

In the 15 years after 1945 U.S. homeownership rates soared as families moved to the suburbs.

© Photos to go/Ewing Galloway

As incomes increased, automobiles simultaneously reduced consumer costs and greatly increased the variety of goods available to consumers. Without cars, we would not have supermarkets, club warehouses, home-improvement centers, or all sorts of other retail categories and shops. In 1912 a typical American grocery store carried about 300 different products. Today, the average supermarket carries 20,000, many carry 50,000, and a few carry well over 100,000 different products. This product diversity is possible only because automobiles bring to the stores a diversity of customers who may live many miles away.

Thanks to autos, Americans enjoy far better housing than they had a century ago. While the full benefits of the automobile were delayed by the Depression and World War II, in the 15 years after 1945 U.S. homeownership rates soared from 44 to 62 percent as millions of families fled inner-city tenements for Levittowns and other suburbs.

This so-called "sprawl" is the "land-use impact" that auto critics want to count as a social cost of autos. But is it really so bad that more families get to live in suburban homes with private yards? The 2000 census found that four out of five Americans live in "urban clusters" of 2,500 people or more, yet these urban clusters occupy just 2.6 percent of the land area of the United States. Not only are we not running out of open space, thanks to automobility most Americans enjoy their own private open spaces in the gardens and play areas in their yards.

Automobiles greatly extended people's social opportunities. Before the auto, rural residents, particularly women, could live for months at a time without seeing anyone except their direct family members. Even urban residents could be isolated: people who moved out of their hometowns might return to see their families only once or twice in their lifetimes. The automobile eliminated this social and familial isolation.

The auto has also opened the door to all sorts of recreational opportunities that previously existed only for the rich, if they existed at all. Skiing, backpacking, wilderness hiking, fly-fishing, boating, surfing, and beachcombing are only a few of the many outdoor sports enabled by the automobile. A century ago only one out of 6,000 Americans visited Yellowstone Park. By 1965 it was more than one out of 100.

Among the other benefits of auto technology are emergency medical care, rapid-response fire and police services, and the ability to evacuate in case of natural disaster. Hurricane Katrina left thousands of families stranded because New Orleans has the lowest auto ownership rate of any major American city. The news media

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reported lengthy traffic jams when Hurricane Rita threatened the Gulf Coast, yet every family with an automobile managed to escape the path of the storm long before it hit.

Perhaps most important, autos are far more egalitarian than the plush Pullman cars and expensive streetcars of a century ago. More than 92 percent of American families own at least one automobile, and whether you drive a 1985 Yugo or the latest Cadillac, you have exactly the same right to drive on any highway, road, or street in the nation.

Ending Highway Subsidies

Government funding of roads, even through user fees, has interfered with the free market. But at least through the 1970s a private road system would not have looked much different from the one America built. Before 1980 most highways were located and built by state and local civil engineers who knew they were funded out of user fees. Their goals were to build safe and efficient roads, and their incentive was to build roads where people wanted to drive so they would pay the user fees needed to fund the roads. Subsidies of less than half a penny per passenger-mile—perhaps $60 to $70 per person per year—would have very little effect on American travel.

Transportation engineers largely ignored social costs when locating and designing highways. In 1950, when the Interstate Highway System was still in the planning stages, transportation economist Shorey Peterson warned against trying to account for social costs. By taking only safety and traffic into account, he observed, engineers could guide highway spending "on a more precise basis" than most other government programs. Any attempt to consider "the public interest," however, would lead to "the wildest and most irreconcilable differences of opinion," predicted Peterson. "Controlled in this way, highway projects are peculiarly subject to 'pork barrel' political grabbing."

This is exactly what has happened in the last two or three decades as urban planners have displaced civil engineers in planning urban transportation. The planners argued that they would better account for social costs. Instead, many have supported a crusade to reduce driving by allowing congestion to increase. Where possible, they diverted highway funds to expensive and little-used rail transit projects. They spent other funds on endless studies or on projects that actually reduced roadway capacities.

The result is that transportation decisions have gotten far more political. In 1981 Congress included just ten "earmarks," or pork-barrel projects, in the transportation bill it passed every six years. According to Ronald Utt's *A Primer on Lobbyists, Earmarks, and Congressional Reform*, since then the number of earmarks has steadily increased, reaching 6,371 in the 2005 bill. In short, thanks to planners, fewer roads have been built than private road companies might have built, and thanks to earmarks, the ones that have been built haven't always been in the best locations.

To libertarians, the solution is obvious: privatization. That is far more easily said than done. However, we can approach the problem incrementally if we recognize that roads are really two separate issues: the highways funded by federal and state user fees and the streets funded out of local taxes.

While only a small increase in gas taxes could eliminate road subsidies, gas taxes are the wrong approach for solving transportation problems. For one thing, it is much more likely that increased state and especially federal gas taxes will end up as pork than that they will trickle down to reduce local street subsidies.

A cents-per-gallon tax also does not account for inflation or changes in fuel economy. Because of inflation and improved fuel economy, you only pay half as much gas tax for every mile you drive as your parents did in 1960. This shortfall in highway revenues is the main reason roads are more congested today than they were a few decades ago.

Finally, gas taxes send the wrong signals to travelers on congested roads. While we expect to pay more for airline tickets and hotels during busy periods, gas taxes are the same whether people drive at 5 a.m. or 5 p.m.

Fortunately, we now have electronic toll systems that were not available when Oregon passed the first gasoline tax in 1919. Electronic toll lanes in California, Minnesota, and other states vary the toll based on the amount of traffic. This insures that the lanes never get congested and people don't waste time (and fuel) sitting in traffic.

Although some people have dubbed these "Lexus

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lanes," surveys show that people of all income levels use them when they need to get to work on time or have some other pressing business. Few people use them all the time, although many women find that they would rather pay a small toll to enjoy the safety of these roads even during nonrush-hour periods.

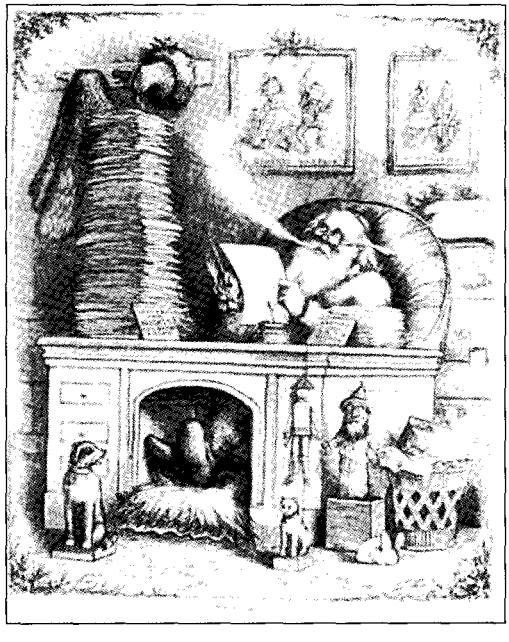
Robert Poole of the Reason Foundation proposes that cities build complete networks of toll lanes that will never be congested, giving buses, emergency vehicles, and anyone else the opportunity to drive the same speeds at rush hour as at midnight. Construction costs can be financed mostly if not entirely out of toll revenues. Many other transportation experts believe that all new highway capacity should be funded out of tolls, leaving gasoline taxes to maintain existing roads.

As more toll roads are built, privatization of those roads will be an obvious next step. Chicago recently sold a 99-year lease to the Chicago Skyway to a Spanish toll-road consortium, and Indiana sold a 75-year lease to the Indiana Toll Road. Cintra-Macquarie, the Spanish consortium, will pay $5.6 billion and promised to maintain the roads and make certain improvements in exchange for collecting the tolls. Chicago and Indiana plan to use the revenues to improve other highways.

Ever the pioneer, Oregon is considering installing GPS transceivers in every car and eventually charging drivers a fee that depends on how many miles they drove on each individual road or street and the time of day they used it. Many people have raised privacy concerns about this plan. On the other hand, Wisconsin has indexed its gas tax to inflation, thereby correcting part of the problem with it as a user fee. Inflation-indexed fuel taxes can still be a fair way of paying for relatively uncongested roads, while tolls should used for new highways and in congested areas.

Local streets would follow a different path to privatization. University of Maryland policy analyst Robert Nelson observes that St. Louis and other cities have allowed neighborhoods to take control of their streets. Eventually, Nelson imagines, that control could include taking over title and road maintenance.

I still bicycle as much as I can and dream of riding trains across the prairies and through the mountains. But I now realize that automobiles have become the dominant form of travel not because of subsidies but because they are the fastest, most economical, and most convenient form of transportation ever devised for most trips between about a mile and several hundred miles. More than any other invention, the automobile liberated Americans and people all over the world.



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Vindicating Voluntaryism

BY GARY M. GALLES

Voluntaryism. Other than to those who have seriously considered the overwhelming case for liberty in human affairs, the word doesn't have a very catchy ring. As a result, it would not survive vetting by our modern gamut of political focus groups and public-relations gurus. Yet that was what Englishman Auberon Herbert used to describe and endorse the only social arrangement that does not deny people's self-ownership—voluntary cooperation.

Herbert, who was born in 1838, died a century ago in 1906. As well as being a member of Parliament, he was a writer, editor, and political philosopher. He advocated government "strictly limited to its legitimate duties in defense of self-ownership and individual rights." Therefore, he said, it must be supported by voluntary contributions.

Auberon Herbert

Unlike many intellectuals, Herbert acted on his avowed beliefs in a manner that made him, as the late Chris Tame put it, "probably the leading English libertarian" in the early twentieth century. His writing, in the words of Benjamin Tucker, the libertarian-anarchist editor of *Liberty*, was "a searching exposure of the inherent evil of State systems, and a glorious assertion of the inestimable benefits of voluntary action and free competition." But in addition, he founded the journal *Free Life* and The Personal Rights and Self Help Association, was an anti-war leader, and more.

(For more about Herbert's life and philosophy, see his collection, *The Right and Wrong of Compulsion by the State and Other Essays*, Liberty Press, 1978, and Eric Mack's "Voluntaryism: The Political Thought of Auberon Herbert," *Journal of Libertarian Studies*, vol. 2, no. 4, 1978.)

Auberon Herbert rejected the term *anarchism* for his beliefs because he believed in government empowered solely for the defensive use of force. Instead, he chose the term *voluntaryism* because it captured a characteristic that is true of "complete liberty in all things," but not of any alternative social "ism": the noncoercive "respect for the rights of others." In his words, "under voluntaryism the state would defend the rights of liberty, never aggress upon them."

If one accepts that every individual owns himself, which Herbert called "supreme moral rights," there is only one consistent form of social organization—mutual consent. From that he derived his view of the role of government: "[T]herefore force may be employed on behalf of these rights, but not in opposition to them." Any other state-imposed compulsion is illegitimate because it must inherently violate mutual consent, and therefore self-ownership. But such illegitimate compulsion is the core of government as we have long experienced it.

At a time in history when, despite occasional garnishes of boilerplate rhetoric in favor of freedom, the

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practical philosophy of those in the innumerable tentacles of our governments is that they own as much of each individual as they choose to, Herbert's moral challenge to the idea that others have "a commission to decide what [their] brother-man shall do or not do" is essential to the defense of the liberty that remains to Americans. And it is equally important to any hope of expanding that liberty.

Herbert started from what he discerned as "the question always waiting for an answer: Do you believe in force and authority, or do you believe in liberty?" Self-ownership led him to the answer that we must "reject compulsion in every form."

Herbert identified self-ownership as the core of John Locke's trinity of "life, liberty and property." Further, he understood that property rights derived from self-ownership were the only solid basis for our mutual pursuit of happiness: "[E]ach man must be left free so to exercise his faculties and so to direct his energies as he may think fit to produce happiness—with one most important limitation. His freedom in this pursuit must not interfere with the exactly corresponding freedom of others." The sole way to achieve this was through "the fullest recognition of property." He drew the ominous implication for our era: "Destroy the rights of property, and you will also destroy both the material and the moral foundations of liberty."

Herbert also showed the logical contradiction between self-ownership and the use of government coercion to pursue happiness: "[N]o man can have rights over another man unless he first have rights over himself. He cannot possess the rights to direct the happiness of another man, unless he possess rights to direct his own happiness: if we grant him the latter right, this is at once fatal to the former."

Herbert recognized that without defending self-ownership and its inevitable implications, there could be no such thing as true morality. "Force rests on no moral foundations," he said, because "without freedom of choice . . . there are no such things as true moral qualities."

Further, he saw that justice (in its legitimate meaning, applicable "for all," as opposed to the many variants that apply only to some by denying equal treatment to others) was only possible under self-ownership: "Justice requires that you should not place the burdens of one man on the shoulders of another man." And the only way to achieve that is to recognize that "If we are self-owners, neither an individual, nor a majority, nor a government, can have rights of ownership in other men."

Herbert reasoned further that once we accept self-ownership, logic must lead us to also accept that "All these various wholes, without any exception, in which an individual is included . . . exist for the sake of the individual. They exist to do his service. . . . If they did not minister to his use, if they do not profit him, they would have no plea to exist." In other words, because it is not true that "numbers . . . take from some persons all rights over themselves, and vest those rights in others," no one can be legitimately forced to support any group decision against his will. Despite this fact, "Far the larger amount of intolerance that exists in the world is the result of our own political arrangements, by which we compel ourselves to struggle, man against man."

The Moral Standpoint

Auberon Herbert thought deeply about self-ownership. He recognized and was repulsed by "the odiousness of compelling men to act against their own wishes," not only from pragmatic considerations, but especially from a moral standpoint. He even put his beliefs in verse, as in the chorus to his poem, *Libertas in Excelsis*:

> Each man shall be free, whoever he be,
> And none shall say to him nay!
> There is only one rule for the wise and the fool—
> To follow his own heart's way.
> For the heart of the free, whoever he be,
> May be stirred to a better thing;
> But the heart of the slave lies chill in its grave,
> And knows not the coming of spring.

In our era, where myriad government bodies tax and regulate away individuals' self-ownership far beyond that when Herbert wrote, we need to hear and act on his compelling case for liberty, with its voluntary arrangements, as *the* organizing principle of society. As he

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recognized, the alternative involves the widespread abuse of people's rights and is ultimately futile: "[A]ll the methods of restriction . . . are wrong and will only end in disappointment."

When Auberon Herbert chose "voluntaryism" to express his political philosophy, logically derived from the principle of self-ownership, he did not pick a term that modern spin doctors would have chosen. But it is hard to imagine a more promising future than that which it envisions, especially in contrast to the direction society seems to be headed today:

"Voluntaryism . . . denies that any good or lasting work can be built upon the compulsion of others. . . . It invites all men to abandon the barren problems of force, and to give themselves up to the happy problems of liberty and friendly co-operation; to join in thinking out—while first and foremost we give to the individual those full rights over himself and over whatever is his. . . how we can do all these things, without at any point touching with the least of our fingers the hateful instrument of an aggressive and unjustifiable compulsion."

In the December issue of *The Freeman*

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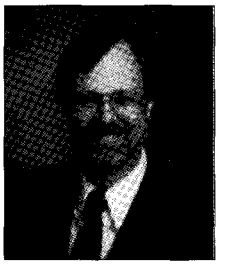
Which New Deal Program Had a Death Rate?



BY BURTON W. FOLSOM, JR.

Franklin Roosevelt's New Deal was often hazardous to the health of the American economy. Sometimes it was even hazardous to the health of Americans. An example is Roosevelt's almost-forgotten decision in 1934 to cancel the federal airmail contracts. Here is the story.

Airmail service began in 1918, and the first such flights were done by the U.S. Army Air Corps. Private airlines, however, were improving so rapidly that soon after 1918 the government bid out contracts to major airlines to deliver the mail. By 1930, with almost all airlines losing money, President Hoover's postmaster general, Walter Brown, decided to award a few large airlines most of the mail routes. That decision was contrary to the law, which mandated competitive bids. Brown, however, did not believe that some of the low bidders, especially former crop-dusters, could safely, efficiently, and profitably deliver the mail. No airline in the 1930s could make a profit on passenger traffic alone, and Brown preferred to see three to five experienced airlines deliver the mail safely and show profits rather than have dozens of companies with varying experience and aircraft providing uneven service over the 27 federal airmail routes. For example, some of the interested airlines had no experience with night flying and no equipment to navigate through the fog and rain.

> On the first day the Army carried the mail, three pilots were killed in two separate crashes.

Perhaps the whole airmail system should have been privatized. The existing system of large federal contracts and self-seeking companies was an invitation to collusion and possible fraud. But the post office was federally operated, and Brown decided to scrap the competitive bids and give most of the business to the largest companies with the best-trained pilots and fewest accidents.

In 1933, with Roosevelt now president, Senator Hugo Black (D-Ala) launched a Senate investigation of the whole federal airmail business. In testimony he discovered the absence of competitive bids, evidence of bribery, and possibly larger-than-necessary subsidies given the major airlines. Black urged Roosevelt to cancel the mail contracts and reopen them for competitive bids.

Roosevelt, who was receptive to attacks on corporations, became enthusiastic about the plan and wanted to cancel the contracts right away. Let the Army Air Corps fly the mail, the President reasoned, until new bids could be taken. However, James Farley, the postmaster general, wanted to wait a few months and transfer the contracts directly to the successful bidders. To pursue Roosevelt's request, one of Farley's assistants talked with Benjamin Foulois, head of the Air Corps, who said he thought his fliers could do the job. According to Farley, "[T]he President favored giving the service an opportunity to distinguish itself." On February 9 Roosevelt publicly announced that all airmail contracts would be canceled in ten days; the Air Corps would again fly the mail for several months until new bids could be taken.

At one level Roosevelt's canceling of the contracts was odd. The airlines in effect had done what he was encouraging all businesses to do under the National Industrial Recovery Act (NIRA): organize, set standards, set prices, and raise wages. Under the NIRA Roosevelt had halted business competition and made legal the very thing he condemned the airlines for doing.

Even without the comparison with the NIRA, Roosevelt was vulnerable on two charges: he voided legally binding contracts and was risking the lives of the Army pilots.

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On the first point the popular aviator Charles Lindbergh, who was employed by TWA, denounced Roosevelt for breach of contract "without just trial." The *Magazine of Wall Street* concurred and asked, "[I]f private industry is to be thus summarily punished without even a fair hearing, what industry can confidently enter into contracts with its Government?"

On the second point veteran pilot Eddie Rickenbacker predicted disaster for the less-qualified Army pilots. Rickenbacker told reporters, "The thing that bothers me is what is going to happen to these Army pilots on a [foggy winter] day like this. Their ships are not equipped with blind-flying instruments."

Rickenbacker did not wait long to be proven a prophet. On the first day the Army carried the mail, three pilots were killed in two separate crashes. One plane hit a mountain in Utah, and another crashed in Idaho after encountering fog. "That's legalized murder," Rickenbacker told inquisitive reporters. But a stubborn Roosevelt persisted. Crashes occurred almost daily, and at the end of the Army's first week of flying, six pilots had been killed, five had been severely injured, and eight planes had been destroyed. Roosevelt began feeling the sting of public rebuke, but he continued anyway and ordered the Army to make fewer flights in the hard winter weather.

Eddie Rickenbacker

Rickenbacker was so angry he went on NBC radio to denounce the continuing flights. According to Rickenbacker, as he prepared to deliver a second radio address he received a phone call from William B. Miller of NBC, whose "orders had come from Washington to cut me off the air if I said anything controversial." Lindbergh had also been complaining, but he was partly negated by Steve Early, Roosevelt's press secretary, who accused Lindbergh of merely seeking publicity.

Meanwhile, Benjamin Lipsner, superintendent of the Aerial Mail Service, pleaded with Roosevelt to "stop those air mail deaths." Roosevelt agreed to limit Army airmail service, but the next day four more Army pilots crashed and were killed. As the criticism of the President increased, Roosevelt wrote Felix Frankfurter: "The scattered forces of the opposition seized on the loss of life among the Army fliers to come together and make a concerted drive. For the last three weeks we have been under very heavy bombardment." He complained that "the aviation companies have been shrieking to high heaven, using Chambers of Commerce and every small community with a flying field to demand the return of their contracts. . . ."

FDR Gives In

After 12 deaths Roosevelt decided he had had enough. He called in the airlines to negotiate. Roosevelt was suffering politically, and the airlines were suffering financially. They struck a deal to turn their mutual suffering into recovery. Under the Air Mail Act of 1934 FDR returned the business to them and in turn they agreed to more competitive bidding, new rules on maximum loads, and separating ownership of the airlines from airplane manufacturing.

The airlines also had to change their names because Roosevelt insisted that no company doing business under the old contracts could have new business. Thus Eastern Air Transport became Eastern Airlines; Trans World Air Transport became Trans World Airlines, and United Air Transport became United Airlines. Lindbergh called Roosevelt's solution "reminiscent of something to be found in Alice in Wonderland." Rickenbacker, who became president of Eastern Airlines, said, "As it stands today, Eastern Air Lines is held up by government subsidy. I believe it can become a free-enterprise industry, and I will pledge all my efforts and energies to making it self-sufficient."

Rickenbacker did not succeed in that noble goal, but with Roosevelt out of the way, the airline industry did succeed in resuming the safe and efficient delivery of the mail. Historians, however, have tended either to ignore or lightly touch on this episode of Roosevelt's presidency. David Kennedy, for example, in his Pulitzer-Prize-winning book on Roosevelt, *Freedom from Fear* (1999), omits the episode completely. If we are to have an accurate evaluation of the Roosevelt presidency, we need to assess those programs that gave death as well as those that gave dollars.

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More Eminent-Domain Bullying

BY FREDRICK K. McCARTHY

The bare facts of the case are these. The N. K. Hurst Co. is a producer and national distributor of specialized dried-bean and related products. Begun 68 years ago, the family-owned business has operated successfully at its present location near downtown Indianapolis for 59 years. It employs approximately 50 people in a building on 4.2 acres.

Surrendering to the usual National Football League blackmail, the city decided to build a new stadium for the Indianapolis Colts. As a part of the process the Colts were promised a specific number of parking spaces with the new stadium. Although it knew the Hurst property would be needed, the city made this commitment before it had acquired ownership or any control of the property.

When finally approached officially, Hurst said, "No. We wish to stay where we are." Contending that a handful of parking spaces to be used only a few times a year were more important than a thriving business, and that such parking spaces were actually a "public use," the state of Indiana, through its newly created Indiana Stadium and Convention Building Authority (ISCBA), filed an eminent-domain suit against the company.

That decision followed months of "negotiations," which were preceded by this statement from the executive director of the building authority: "We absolutely need their [Hurst] property. What's to be negotiated is how we pay them." So much for good-faith "negotiating."

The actual narrative starts as much as a decade ago when the decision to build a new stadium took form despite official denials that continued almost to the announcement of the agreement between the city and the Colts.

The city began quietly to purchase land near the present convention center, which also houses the RCA Dome, the current home of the Colts. The few perfunctory questions asked by the media about the future use of such lands went unanswered. It was apparent to any reasonable observer that something was in the works, but no investigative action took place. Media research appeared to be limited to making certain the mayor's publicity releases—mostly denying plans for a stadium—were quoted correctly and punctuated properly.

City officials then decided on an end-around play. They announced that the Convention Center was much too small, that extensive expansion was needed, and that expansion would require demolition of the RCA Dome. The then-"required" new stadium was hyped as a "multiuse facility" with only coincidental use by the football team. Despite this charade, everyone knew the Colts were in the driver's seat and it was their demand that the stadium have a retractable roof, adding $70–$80 million to its cost.

It was of course a foregone conclusion that the taxpayers should finance the new palace.

The land being purchased was adjacent to the Hurst property, and city representatives finally approached the company about acquisition. The Hursts, despite their saying no, believed the city might be open to real negotiation, including a land swap that would be costly to neither party.

There was one little problem with the project: money. The estimated cost of the whole thing—

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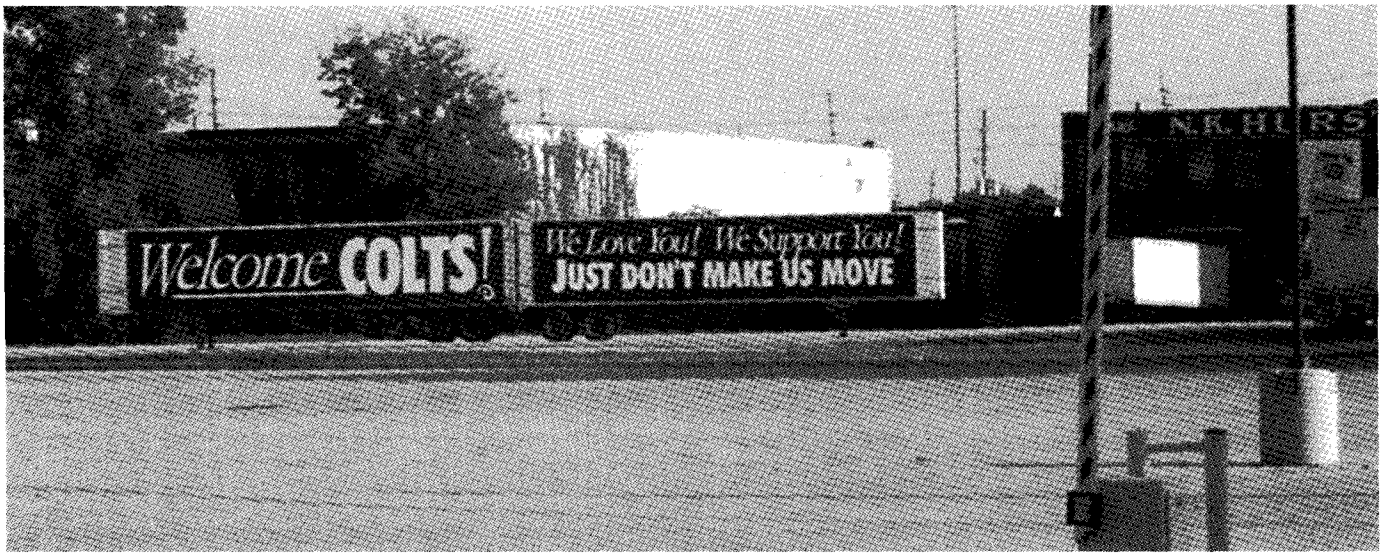

Does this look like a company being intentionally obstructionist?

stadium and convention center—was now nearing three quarters of a *billion* dollars. The state legislature was asked to allow the city to fund the project with new and increased revenues from gambling. This proposal was doomed from the start, which the proponents undoubtedly knew.

But by now, with "stadium necessity" hysteria having been whipped up by the local media, "whether?" was no longer the acceptable question. The question being discussed was "how?" The use of gambling revenues having been vetoed, city officials felt entitled to say to the state, "Okay, you didn't like our idea. Let's hear from you."

State tax revenues were already involved. When increased state participation was proposed, the state took responsibility for the construction of the project. The activity would be carried out by the Building Authority, a seven-member board, four of whom are appointed by the governor. Under the terms of the 2005 legislation establishing the board, it would relinquish operation of the facility to the city when construction was complete.

Shortly after the state took over, the Building Authority's head made the previously cited statement that the only thing to be negotiated was "how much." When the governor received a letter protesting the "negotiations," his chief of staff claimed the Building Authority was forced into its actions by having to work within restrictions of the previous city agreement. No mention was made that the state had shoehorned its way into the situation. The chief's letter added that state representatives "have had negotiations with the Hursts to see if there is a way for the operation to stay in place without adversely affecting the Project."

It should be noted that the Hurst decision to stay put was not simply a selfish or stubborn one. Employees have been with the company an average of 16 years. A move out of downtown would have put many of those employees at the mercy of a sadly deficient public transportation system and might have cost them their jobs.

With meetings continuing and threats of eminent domain being heard, letters to the local newspaper in support of the Hursts began to appear. Legislators were also making noises about tightening up the eminent-domain law in the coming session.

The State Files Suit

The Building Authority decided to file the suit with the express purpose of heading off any action the legislature might take. The newspaper editorially described this action as "reasonable," even though it came while the Hursts were still negotiating in good faith.

While the top offer by the Authority was "up to $6 million," the Hursts had long ago determined that the actual cost of moving would be over $10 million.

Determined to stay, the Hursts offered an irregularly shaped piece of the land to the Authority in exchange

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for a parcel adjacent to their own property and already controlled by the Authority. The even trade would leave both parties with regular, "squared off" sections. The Authority rejected the offer out of hand. Eventually the Authority settled for a swap that gave it 2.7 acres of Hurst land in return for one acre of state land, leaving the building and the business at the same location but with no room for expansion.

But at this point the bargaining had been reduced primarily to provisions insisted on by the Building Authority that concerned control of the company and its future business activities—none of which had any bearing on the construction of the stadium or the provision of parking spaces.

The Hursts were now spending far more time on this problem than on the business itself. Legal costs, even without a trial, were about $700,000. The state's antagonistic manner in the "negotiations" made a drawn-out trial inevitable, diverting ever-increasing time and money from far better uses in operating the plant.

So the Hursts reached a final agreement that allowed the business to remain at its location, but with completely unreasonable restrictions the owners felt they had to accept if they were to get on with their lives. Interestingly, the Authority signed the agreement three days before it would have had to turn over discovery documents for the upcoming litigation.

Under the terms, for the next 30 years the Building Authority can take over the property if the Hursts: 1) decide they wish to change the nature of their business; 2) receive an acceptable third-party offer to purchase the property; 3) are, in the opinion of the Authority, no longer operating the business within the present property; or 4) are no longer owners of 50 percent of the business. They could also lose the property if the current operation no longer constitutes 50 percent of the business being done there.

The newspaper quoted the Authority chairman saying that since the state did not get all the land it "needed" it would have to build a $15–$18 million parking garage, implying that this was the Hursts' fault.

Shameful Blot

This episode is a shameful blot on the reputation of the state and city. Surely this governmental bullying of small business, which politicians are so fond of claiming as the heart of the economy, would not be overlooked by a firm seeking a new site in the area.

There is also a blot on the business community. Throughout the process no local or state business association gave public support to or made any offer to assist this small business in its battle against an arrogant, non-elected state agency.

Dictionaries used by business and political leaders of the state and city appear to have lost the page that contains the words "principle" and "priority."

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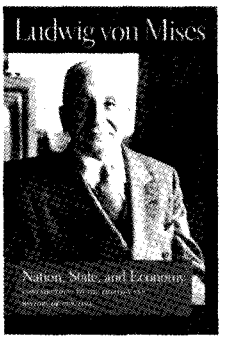
Book Reviews

Nation, State, and Economy: Contributions to the Politics and the History of Our Time

by Ludwig von Mises
Liberty Fund • 2006 • 220 pages • $20.00 hardcover; $12.00 paperback

Reviewed by Richard M. Ebeling



Without a doubt, World War I was one of the most momentous events of the last hundred years. Indeed, it could be argued that it was *the* most important event during this time. It marked the break between the generally classical-liberal epoch that had prevailed during the nineteenth century and the collectivist era that has dominated world civilization ever since.

Of course, collectivism had been growing in intellectual and political influence for several decades before the war began in 1914. But it was that war that released the demons on the entire world: socialism, communism, fascism, Nazism, interventionism, and the welfare state.

The Austrian economist Ludwig von Mises served in the Austro-Hungarian Army during the war as an artillery officer, seeing action on the eastern front against the Russians. After the war ended in November 1918 Mises returned to his prewar employment as an economic analyst for the Vienna Chamber of Commerce. In that role he was deeply involved in the postwar politics and economics of the new, small Austrian Republic. In the middle of all these events he found time to write *Nation, State, and Economy*, which appeared in the early autumn of 1919. In its pages he attempted to explain the causes and consequences of the war. After being out of print for many years, the English translation of this important volume is available once again, published by Liberty Fund.

The book is really two long essays on related themes. The first part is an insightful analysis of the origins and implications of modern nationalism and the concept of nationality in general. The second part is devoted to a detailed study of the relationships between socialism, imperialism, and war.

A sense of nationality has often been said to be linked to a common racial or cultural heritage. Mises argues, however, that in modern times feelings and attitudes of a shared national belonging, especially in Europe, have had their origin in a common language. Language, he says, is the means through which we reason, communicate, and have a shared basis with others for understanding and interpreting the world. The linguistic stamp is impressed on us in childhood from those immediately around us as we absorb a language. "Community of language binds and difference of language separates persons and peoples," Mises states.

Mises is careful to explain that neither a language nor a language group is static; both are constantly in flux. But at any moment a shared language works as a strong element of self-identity and a common bond with others. Mises goes to great lengths to challenge the racial conception of nationality, especially as it had been developing in Germany in the decades before the war. "Germans" could be shown to have many ethnic backgrounds; what they all possessed was the German language.

Over the last 200 years, Mises explains, political nationalism took two forms: "liberal nationalism" and "militant or imperialistic nationalism." Liberal nationalism was grounded in the idea of individual freedom, which included the right of individuals to decide the state to which they wished to belong. This meant kings and princes no longer should have the right to trade among themselves territories and their inhabitants. The notion of national self-determination was a natural outgrowth of this. In Western Europe, where there were compact and relatively homogeneous linguistic groups, the boundaries of states could frequently reflect the borders between these groups.

That was more difficult in Central and Eastern Europe, a patchwork of overlapping and adjacent linguistic groups within the same states. Political boundaries could not easily be drawn along linguistic lines, so linguistic majorities held political power over linguistic minorities.

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If classical liberalism had prevailed and governments had been limited to securing life, liberty, and property, Mises suggests, the frictions between linguistic groups living in these nation-states might have been minimized. But with the growth of interventionist ideologies and policies in the second half of the nineteenth century, government power was inevitably used to benefit one linguistic group at the expense of another. This became the basis for the nationalistic conflicts and wars in Europe over the last 150 years.

In the decades before World War I German nationalism was grounded in two ideas: that all Germans had to be unified within the same political state (even if this meant incorporating and oppressing minority linguistic groups), and that Germany had to have a territory large enough to be self-sufficient in land and resources to match the economic potential of any political rival for domination on the European continent. Those goals generated a spirit of German militarism and imperialism, Mises laments, that set the stage for the events that then unfolded beginning in 1914.

Classical liberalism, Mises argues, focuses on the rights and the welfare of the individual. Nationalism and imperialism see only the collective to which the individual must be made subservient for the sake of the nation-state, even if subservience includes paying what he calls the "blood tax"—that is, being sacrificed on the battlefield for the glory of national greatness.

In the second part of the book one sees already many of the ideas for which Mises would become famous in the twentieth century. He demonstrates why central economic planning and regulation during war are the exact opposite of what should be done if a country is to use its full potential against its enemies. It is precisely during a national emergency, when resources and productive ability must be quickly shifted from peacetime to wartime uses, that the market must be left free. Market-based profit incentives and entrepreneurial ingenuity will get the job done far better than any bureaucracy.

Mises also challenges the popular delusions about supposed wartime "booms." Regardless how a war is financed—increased taxation, more borrowing, or printing-press money—society ends up poorer. Consumers see fewer goods made for them because scarce resources must be shifted to making the tools of war. Often capital is not fully maintained and replaced due to the pressures of war production, resulting in a loss of productive capability. And of course, part of the labor force is killed or permanently maimed in battle, while part of the society's physical capital is destroyed in the conflict.

What creates the illusion of wartime prosperity is the apparent good times generated by inflation. Here Mises hammers away that inflation creates the illusion of prosperity only because of the "non-neutral" manner in which increases in the money supply ripple through the economy. Thus it appears that profits are improving and incomes are rising when in fact beneath the monetary surface massive distortions and imbalances are being produced by the inflationary process. Mises was one of the first economists to demonstrate how inflation can distort accounting methods, resulting in actual capital consumption.

One also sees in this book the germ of his critique of socialist central planning—which he would publish a year later—when in his analysis of inflation he emphasizes the crucial role of economic calculation and a stable monetary system if resources are to be used efficiently and capital is to be properly maintained and allocated to the most highly valued uses.

In the concluding chapter Mises bemoans the fact that all the great industrial achievements made possible by the classical-liberal epoch of the nineteenth century had been placed in the service of collectivism and imperialism. The push of a button can send tens of thousands to their deaths because the technologies of peaceful capitalism had been perversely adapted to violent statist ends.

And the shadow of the next world war was already seen by Mises. He warned his fellow Germans and Austrians that if in defeat they vengefully planned a future war, they could well face "the complete annihilation of the German people." All who have seen the photographs of the wasteland that Germany became in World War II can appreciate how clearly in 1919 Mises had foreseen the disaster that faced Germany 25 years later thanks to its failure to turn its back on collectivism and its Nazi permutation in the 1930s.

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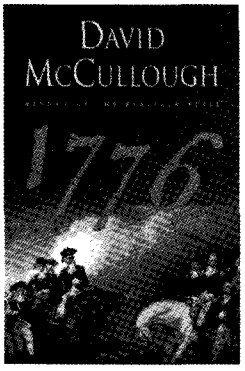
1776

by David McCullough
Simon & Schuster • 2005 • 294 pages • $32.00 hardcover; $18.00 paperback

Reviewed by George C. Leef



1776 is Pulitzer Prize-winning author David McCullough's chronicling of the momentous year in which Britain's American colonies declared their independence from the ruling monarchy, came exceedingly close to military defeat on several occasions, and finally won a morale-boosting victory that sufficed to keep the fire of rebellion from dying out the following winter. This, of course, is history that has been told many times before, but McCullough not only recounts the tumultuous events in a gripping manner, but also weaves into his account enough of the philosophy of the contending sides to make the book considerably more than just another military history. The details of troop movements, attack and defense, weaponry, and so on are all here. So, too, is a look into the minds of the men who fought to shape the destiny of North America in that amazing year.

We learn, for example, a great deal about King George III, who was dismissive and contemptuous of the patriot forces and regarded it as his "duty" to restore order in his empire by compelling his rebellious subjects to obey. How dearly he, but mostly the people of England, would pay for his haughty attitude. As with so many rulers throughout history, King George's imperious cast of mind would lead to great suffering among his friends and foes alike.

Some readers will be surprised to learn that there was a considerable antiwar faction in England. One newspaper, the *Evening Post*, denounced the war to force the naughty colonists to respect their royal masters as "unnatural, unnecessary, unjust, dangerous, hazardous, and unprofitable." Letters home from soldiers serving in the colonies also attacked the King's war policy. One, from an officer stationed in Boston, expressed the wish that all the "violent people" who advocated war should come across the Atlantic to experience it themselves. "God send us peace and a good fireside in Old England," the man wrote plaintively.

Nor, we learn, was the war uniformly popular with the aristocracy. In the House of Lords the Duke of Grafton, saying the King's ministers had deceived him as to the true state of affairs in America, proposed that every act that Parliament had passed regarding the colonies since the disastrous Stamp Act of 1765 should be immediately repealed. He argued that "nothing less will accomplish any effectual purpose, without scenes of ruin and destruction, which I cannot think on without the utmost grief and horror." And in the House of Commons, John Wilkes, Lord Mayor of London, maintained that the war with "our brethren" in North America was "unjust, fatal, and ruinous to our country." Whether McCullough had current U.S. policy in mind when he included these pages on dissent from British policy in 1776, they have an unmistakable connection across the centuries.

Why did the patriots fight? McCullough answers: "Asked what they were fighting for, most of the army—officers and men in the ranks—would until now have said it was in defense of their country and their rightful liberties as freeborn Englishmen." Driving away the hated redcoats was the motive for most of the soldiers. The idea that political independence should be the objective had not gained many adherents in 1776. That abstraction wasn't nearly as potent a motivator as the presence of British regulars, widely regarded as an invading force.

On the battlefield it's often better to be lucky than good, and much of *1776* is proof of that adage. A diligent British commander would have had little difficulty in defeating Washington's army in 1776, especially in view of the repeated military blunders Washington committed during the New York campaign that summer. Fortunately, the British general commanding the land forces, William Howe, was, McCullough writes, "slow-moving, procrastinating, negligent in preparing for action, interested more in his own creature comforts and pleasures." Howe made no effort to understand his adversary or to fathom his intentions. His indolence was a constant source of irritation for his more aggressive subordinates.

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On several occasions, Washington's attempts to defend New York—which was quite impossible given the British control of the seas—nearly led to the destruction of the Continental Army. The unsung hero of the year was really Colonel John Glover, whose regiment of expert boatmen from Massachusetts saved the army from capture on Long Island by rowing it off to temporary safety, saved it again by plugging a defensive gap at White Plains, and finally made possible the surprise attack on the Hessians at Trenton by rowing the army across the icy Delaware River. Readers will revel in the detailed account McCullough provides of the famous surprise attack on Trenton.

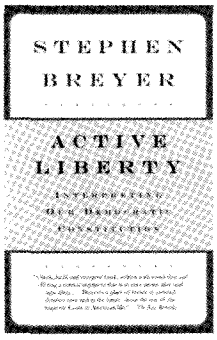
Beautifully written and printed, *1776* is a book that belongs in the library of everyone who has a desire to understand how the United States came to be.

George Leef (georgeleef@aol.com) is book review editor of The Freeman.

Active Liberty: Interpreting Our Democratic Constitution

by Stephen Breyer
Alfred A. Knopf • 2005 • 161 pages • $21.00 hardcover; $12.95 paperback

Reviewed by Michael DeBow



Active Liberty deserves to be widely read and discussed. In it Justice Stephen Breyer explains his approach to the Constitution and his view of the proper role of the federal courts. Based on a series of lectures he gave at Harvard in 2004, the book is not likely to win over many readers of *The Freeman* to Breyer's point of view. But I can think of no better book to read if one is interested in how talented left-of-center judges and lawyers think.

Broadly speaking, there are two ways to look at the Constitution—one focuses on the text, the other doesn't. Justice Breyer is firmly in the latter camp. Specifically, he argues for a form of interpretation known as "purposivism," which he explains by quoting a 1941 Supreme Court opinion: "The judge should read constitutional language 'as the revelation of the great purposes which were intended to be achieved by the Constitution' itself, a 'framework for' and a 'continuing instrument of government.' " Note well the word "continuing." Breyer's Constitution is of the living-breathing variety, and he is comfortable with the massive regulatory-welfare state we now have. Property rights are mentioned once in his book, and the concept that the federal government has only enumerated (limited) powers is ignored, as is the Founders' assumption that most government business would be settled at the state or local level. At one point, Breyer dismisses "textualism"—the more text-bound approach to the Constitution—by characterizing it as "placing weight upon eighteenth-century details to the point at which it becomes difficult for a twenty-first century court to apply the document's underlying values."

Chief among the Constitution's "underlying values" that Breyer is keen to advance is "active liberty," which he also refers to as "ancient liberty." He cites Benjamin Constant, a nineteenth-century political philosopher, for the distinction between "ancient" and "modern" liberty. Modern liberty is what most people likely have in mind when using the word: "freedom from government, . . . the individual's freedom to pursue his own interests and desires free of improper government interference." Breyer contrasts this everyday meaning with "the active liberty of the ancients, what Constant called the people's right to 'an active and constant participation in collective power.' "

Elsewhere, Breyer defines active liberty as "the scope of the [citizen's] right to participate in government," and the "principle" of active liberty as "the need to make room for democratic decision-making." Active liberty is the great "democratic theme" that, Breyer assures us, "resonates throughout the Constitution."

Breyer cannot, of course, point to the term "active liberty" in the text of the Constitution because it does not appear there. The unmodified word "liberty" does appear twice outside the Preamble—in the due-process clauses of the Fifth and Fourteenth Amendments—but Breyer makes no attempt to tie his purposivism to these textual anchors. Rather, his claim for the legitimacy of his interpretive theory depends

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on his reading of the broad outlines of American political history.

The problem with purposivism is that it is an open invitation to judges to legislate from the bench. The Supreme Court decisions Breyer discusses do not reassure the reader on this point, despite his repeated references to the need for judicial restraint.

Remarkably, Breyer does not discuss *Roe v. Wade*, almost certainly the most widely debated modern decision in which the Supreme Court gave an expansive reading to the term "liberty" in the Fourteenth Amendment. Since *Roe* is the elephant in the middle of the room of American constitutionalism, the omission is indefensible.

Breyer does attempt a purposive defense of the Supreme Court's 2003 decision upholding the affirmative action practices of the University of Michigan Law School. He declares that "equality . . . is the underlying objective of the Equal Protection Clause" and that affirmative action promotes equality. Q.E.D. He engages in no textual analysis beyond that, and does not try to make any argument based on the history of the adoption of the Fourteenth Amendment.

Breyer's defense of the Court's 2003 decision upholding the McCain-Feingold campaign-finance statute likewise depends on his judgment that the underlying objective of the free-speech clause of the First Amendment is to protect "participatory self-government" and that this objective is best served by restrictions on campaign contributions. His explanation of his vote against allowing parents to use federal education vouchers to pay parochial-school tuition depends on his judgment that the underlying objective of the First Amendment's establishment clause is the avoidance of "religious strife."

Most of the rest of Breyer's examples sound this same theme. It's underlying objectives all the way down, to borrow the punch line from an old joke.

Although *Active Liberty* failed to convert me to the cause of purposivism, I applaud Justice Breyer for writing such an honest book. *Active Liberty* invites interested citizens to discuss the nature of the Constitution and of judging.

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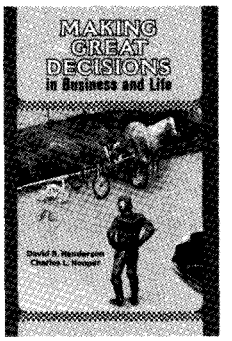
Making Great Decisions in Business and Life

by David R. Henderson and Charles L. Hooper
Chicago Park Press • 2006 • 287 pages • $28.50

Reviewed by Philip R. Murray



David Henderson and Charles Hooper have given us a "how to" book employing economic principles to solve common problems.

The problems range from everyday situations to far deeper problems calling for sophisticated analysis. Hooper explains how he figured out why his gas grill quit working. Henderson tells how he salvaged his vacation by buying pillows from a department store instead of upgrading his hotel. Or consider the choice between looking for a postcard stamp and using a letter stamp. The authors recommend using a regular stamp because the value of your time is greater than the few cents you'd save. Under their assumptions that you earn $200 an hour and the probability of finding a postcard stamp is 75 percent, they calculate that you should spend no more than 1.89 seconds looking.

Thinking about buying a compact car? Henderson and Hooper introduce the concept of a "micromort" to shed light on the tradeoff between the lower price of the compact and the greater risk of death due to an accident. "A micromort" they explain, "is a unit of cost that you bear for engaging in risky activities." Given a few assumptions about small and large cars, they calculate that the greater risk of death from driving the former amounts to $10,900 compared to $5,300 for the latter. "The larger car undoubtedly costs more to purchase and operate," they conclude, "but given everything else equal . . . it is worth $5,600 more purely due to its safety."

The most complicated technique is the "risk-averse expected net present value approach," which the authors apply to buying home insurance. Intuition suggests we buy insurance because "we are happy spending a little money to protect ourselves from big losses." The mathematics of the "risk-averse expected net present value approach" shows the logic of that intuition. Readers should not be deterred by this and a few other technical

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sections in the book; there are plenty of basic rules of thumb to help them with the difficult patches.

The authors also take on some controversial policy topics and provide a warning label for one discussion: "Before you read on, let us warn you that we are about to challenge a commonly accepted belief." That belief is the immorality of sweatshop labor. Henderson and Hooper explain that refusing to buy products made in sweatshops may actually harm some workers who lose their jobs or take lower paying jobs elsewhere. Thus comprehension of economics may help "socially conscious" consumers avoid a decision—boycotting sweatshop products—that would be counterproductive.

Henderson and Hooper return to the question of decisions affecting auto safety with a look at the famous Ford Pinto. Ford could have spent a small amount per car to prevent the gas tank from exploding. "Based on Ford's estimated value of a human life and its estimated probability of fires," however, "it concluded that the $11 part was too expensive."

What might be shocking is that we live in a world where automakers sell cars that aren't as safe as possible. To explain why not, Henderson and Hooper cleverly pose two alternative scenarios. In the first, "Ignorant Cars International" suppresses any thought of making its cars safer for fear of being caught putting a car on the market knowing it could have been safer still. In the second, "Infinite Motors" encourages its employees to think of ways to make cars safer and implements each measure before cars go on the market. Ignorant's cars won't get any safer, but Infinite's cars will either never reach the market or they'll be so expensive few will buy one. In the real world, companies make cars incrementally safer over time and people risk buying cars that are affordable but not the safest possible.

Reading *Making Great Decisions* is apt to change your behavior to some degree. Anyone who has been spending more than a few seconds searching for postcard stamps will probably reconsider. Some may replace their old refrigerators for a double-digit return on their investment. A few might construct a decision tree to analyze buying insurance. Thanks to Henderson and Hooper, everyone will find that the mental toolbox of economic thinking is useful.

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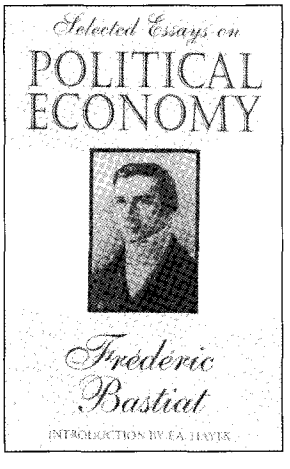

Selected Essays on Political Economy

By Frédéric Bastiat

Introduction by F.A. Hayek

Frédéric Bastiat (1801–1850) was the most uncompromising advocate of laissez faire in the nineteenth century—and arguably the most quotable! Here, in a single volume, are Bastiat's most brilliant contributions to the controversies of his age.

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This collection includes his immortal classics "The Law," "The State," and "What Is Seen and What Is Not Seen."

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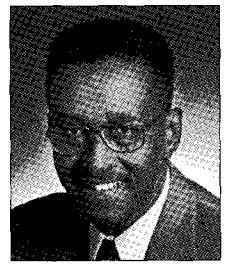
Constitution Day



BY WALTER E. WILLIAMS

On September 17, 1787, 39 men signed the U.S. Constitution. Each year since 2004 we have celebrated Constitution Day as a result of legislation, fathered by Senator Robert Byrd, that requires federal agencies and every school that receives federal funds, including universities, to have some kind of program on the Constitution. I cannot think of a more deceitful piece of legislation or a more constitutionally odious person to father it—a person who is known as, and proudly wears the label, "King of Pork." The only reason that Constitution Day is not greeted with contempt is that most Americans are totally ignorant about the framers' vision in writing our Constitution. Let's examine that vision to see how much faith and allegiance today's Americans give to the U.S. Constitution.

James Madison is the acknowledged father of the Constitution. In 1794, when Congress appropriated $15,000 for relief of French refugees who fled from insurrection in San Domingo (now Haiti) to Baltimore and Philadelphia, Madison wrote disapprovingly, "I cannot undertake to lay my finger on that article of the Constitution which granted a right to Congress of expending, on objects of benevolence, the money of their constituents" (James Madison, 4 *Annals of Congress* 179 [1794]). Today, at least two-thirds of a $2.5 trillion federal budget is spent on the "objects of benevolence." That includes Medicare, Medicaid, Social Security, aid to higher education, farm and business subsidies, welfare, ad nauseam.

A few years later, Madison's vision was expressed by Representative William Giles of Virginia, who condemned a relief measure for fire victims. Giles insisted that it was neither the purpose nor a right of Congress to "attend to what generosity and humanity require, but to what the Constitution and their duty require" (http://tuftsprimarysource.org/?p=163).

In 1827 Davy Crockett was elected to the House of Representatives. During his term of office a $10,000 relief measure was proposed to assist the widow of a naval officer. Crockett eloquently opposed the measure saying, "Mr. Speaker: I have as much respect for the memory of the deceased, and as much sympathy for the suffering of the living, if there be, as any man in this House, but we must not permit our respect for the dead or our sympathy for part of the living to lead us into an act of injustice to the balance of the living. I will not go into an argument to prove that Congress has not the power to appropriate this money as an act of charity. Every member on this floor knows it. We have the right as individuals, to give away as much of our own money as we please in charity; but as members of Congress we have no right to appropriate a dollar of the public money" (from his famous "Not Yours To Give" speech, originally published in *The Life of Colonel David Crockett* by Edward Sylvester Ellis, www.fee.org/library/books/notyours.asp).

In 1854 President Franklin Pierce vetoed a popular measure to help the mentally ill saying, "I cannot find any authority in the Constitution for public charity." To approve the measure "would be contrary to the letter and the spirit of the Constitution and subversive to the whole theory upon which the Union of these States is founded" ("Franklin Pierce's 1854 Veto," www.disabilitymuseum.org/lib/docs/682.htm?page=2). During President Grover Cleveland's two terms in office he vetoed many congressional appropriations, often saying there was no constitutional authority for such an appropriation. Vetoing a bill for relief charity, Cleveland said, "I can find no warrant for such an appropriation in the Constitution, and I do not believe that the power and duty of the General Government ought to be extended to the relief of individual suffering which is in no manner properly related to the public service or benefit" (18 *Congressional Record* 1875 [1887]).

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Compared to today, yesteryear's vision differs vastly in what congressional actions are constitutionally permissible. How might today's Congress, President, and courts square their behavior with that of their predecessors? The most generous interpretation of their behavior I can give is their misunderstanding of Article I, Section 8 of the Constitution, which reads, "The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States." Misuse of the General Welfare clause serves as warrant for Congress to do just about anything on which it can secure a majority vote.

The framers addressed the misinterpretation of this clause. Madison said in a letter to James Robertson, "With respect to the two words 'general welfare', I have always regarded them as qualified by the detail of powers connected with them. To take them in a literal and unlimited sense would be a metamorphosis of the Constitution into a character which there is a host of proofs was not contemplated by its creators." Madison also said, "If Congress can do whatever in their discretion can be done by money, and will promote the General Welfare, the Government is no longer a limited one, possessing enumerated powers, but an indefinite one, subject to particular exceptions" (Letter to Edmund Pendleton, January 21, 1792, www.jmu.edu/madison/center/mainpages/madisonarchives/quotes/great/constitution.htm). Madison laid out what he saw as constitutional limits on federal power in Federalist 45, where he explained, "The powers delegated by the proposed Constitution to the federal government are few and defined . . . to be exercised principally on external objects, as war, peace, negotiation, and foreign commerce."

Thomas Jefferson explained in a letter to Albert Gallatin, "Congress has not unlimited powers to provide for the general welfare, but only those specifically enumerated."

What accounts for today's acceptance of a massive departure from the framers' clear vision of what federal activities were constitutionally permissible? It is tempting to blame politicians, and yes, we can blame them to some extent. But most of the blame lies with the American people, who are either ignorant of the constitutional limits the framers imposed on the federal government or have contempt for those limits.

If They Were Running Today

We can see this by imagining that Madison, Pierce, or Cleveland were campaigning for the presidency today. Imagine their saying to today's Americans they cannot find "a right [of] Congress of expending, on objects of benevolence, the money of their constituents" or "any authority in the Constitution for public charity." Or, "I can find no warrant for such an appropriation in the Constitution." Their candidacy would be greeted with contempt by most Americans. They would be seen as callous, mean-spirited men by a nation of people who have now come to believe they have a right to live at the expense of other people through a variety of federal programs. Such a belief differs only in degree, but not kind, from the belief that one American should be forcibly used, through the tax code, to serve the purposes of another American.

The tragedy is that once such a belief system becomes acceptable, it pays for all Americans to attempt to live at the expense of others. If one American does not use government to live at the expense of another American, that does not mean he will pay lower taxes. It only means that there will be more money left over for others. In a word or so, once legalized theft becomes the standard, it pays for everyone to become a thief. A hundred years from now what Congress does and what is in the Constitution will bear absolutely no relationship at all. As a result Americans will be poorer both in terms of liberty and standard of living. They just might curse today's generation.

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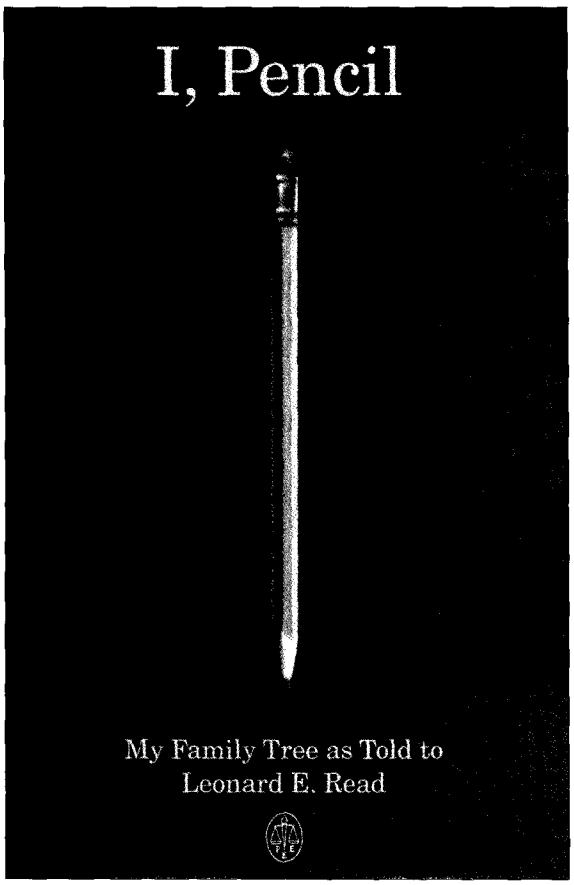

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